Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 17 NOVEMBER 9, 1983 No. 45

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 83-219)

Quarterly Rates of Exchange

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Quarter Beginning: October 1, 1983 through December 31, 1983.

Country	Name of currency	U.S. dollars
Australia	Dollar	0.89790
Austria	Schilling	.054208
Belgium	Franc	.018786
Brazil	Cruzeiro	.001355
Canada	Dollar	.811359
China, P.R	Renminbi yuan	.507537
Denmark	Krone	.105552
Finland	Markka	.176991
France	Franc	.125345
Germany	Deutsche mark	.381243
Hong Kong	Dollar	.114943
India	Rupee	.098039
Iran	Rial	N/A
Ireland	Pound	1.1886
Italy	Lira	.000629
Japan	Yen	.004271
Malaysia	Dollar	.426076
Mexico	Peso	.006349
Netherlands	Guilder	.340948
New Zealand	Dollar	.65820
Norway	Krone	.136426
Philippines	Peso	.090498
Portugal	Escudo	.008065
Republic of So. Africa	Rand	.90220

Country	Name of currency	U.S. dollars
Republic of So. Africa	Rand	.90220
Singapore	Dollar	.467946
Spain	Peseta	.006605
Sri Lanka	Rupee	.040984
Sweden	Krona	.127992
Switzerland	Franc	.473261
Thailand	Daht (Tical)	.043497
United Kingdom	Pound	1.4835
Venezuela	Bolivar	.078125

(LIQ-03-01 S:C:I)

Dated: October 3, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-220)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
September 1-2, 1983	$0.111857
Chile peso:	
September 1-2, 1983	.012346
Colombia peso:	
September 1-2, 1983	.012273
Greece drachma:	
September 1, 1983	.010811
September 2, 1983	.010753
Indonesia rupiah:	
September 1, 1983	.001016
September 2, 1983	.001013
Israel skekel:	
September 1-2, 1983	.017343

Peru sol:	
September 1–2, 1983	$0.000512
South Korean won:	
September 1–2, 1983	.001265

(LIQ–03–01 S:C:I)

Dated: December 2, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83–221)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

September 5, 1983 Holiday use rates for September 2, 1983.

Argentina peso:	
September 6, 1983	$0.111875
September 7, 1983	.089127
September 8, 1983	.089286
September 9, 1983	.085837
Chile peso:	
September 6–8, 1983	.012346
September 9, 1983	.012270
Colombia peso:	
September 6–8, 1983	.12228
September 9, 1983	.012151
Greece drachma:	
September 6, 1983	.010805
September 7, 1983	.010730
September 8, 1983	.010793
September 9, 1983	.010823
Indonesia rupiah:	
September 6–9, 1983	.001013

Country	Name of currency	U.S. dollars
Republic of So. Africa	Rand	.90220
Singapore	Dollar	.467946
Spain	Peseta	.006605
Sri Lanka	Rupee	.040984
Sweden	Krona	.127992
Switzerland	Franc	.473261
Thailand	Daht (Tical)	.043497
United Kingdom	Pound	1.4835
Venezuela	Bolivar	.078125

(LIQ-03-01 S:C:I)

Dated: October 3, 1983.

ANGELA DEGAETANO,
Chief,
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(T.D. 83-220)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

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Argentina peso:	
September 1-2, 1983	$0.111857
Chile peso:	
September 1-2, 1983	.012346
Colombia peso:	
September 1-2, 1983	.012273
Greece drachma:	
September 1, 1983	.010811
September 2, 1983	.010753
Indonesia rupiah:	
September 1, 1983	.001016
September 2, 1983	.001013
Israel skekel:	
September 1-2, 1983	.017343

Peru sol:	
September 1–2, 1983	$0.000512
South Korean won:	
September 1–2, 1983	.001265

(LIQ–03–01 S:C:I)

Dated: December 2, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83–221)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

September 5, 1983 Holiday use rates for September 2, 1983.

Argentina peso:	
September 6, 1983	$0.111875
September 7, 1983	.089127
September 8, 1983	.089286
September 9, 1983	.085837
Chile peso:	
September 6–8, 1983	.012346
September 9, 1983	.012270
Colombia peso:	
September 6–8, 1983	.12228
September 9, 1983	.012151
Greece drachma:	
September 6, 1983	.010805
September 7, 1983	.010730
September 8, 1983	.010793
September 9, 1983	.010823
Indonesia rupiah:	
September 6–9, 1983	.001013

Israel shekel:	
September 6–9, 1983	$0.017343
Peru sol:	
September 6–8, 1983	.000508
September 9, 1983	.000502
South Korea won:	
September 6–9, 1983	.001265

(LIQ–03–01 S:C:I)

Dated: September 9, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83–222)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
September 2–16, 1983	$0.085837
Chile peso:	
September 12–15, 1983	.012270
September 16, 1983	.012225
Colombia peso:	
September 12–15, 1983	.012151
September 16, 1983	.012092
Greece drachma:	
September 12, 1983	.010823
September 13, 1983	.010770
September 14, 1983	.010768
September 15, 1983	.010770
September 16, 1983	.010758
Indonesia rupiah:	
September 12–16, 1983	.001013

Israel shekel:	
September 12–16, 1983	$0.017343
Peru sol:	
September 12–15, 1983	.000502
September 16, 1983	.000498
South Korea won:	
September 12–14, 1983	.001265
September 15–16, 1983	.001264

(LIQ–03–01 S:C:I)

Dated: September 16, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83–223)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs Officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
September 19–23, 1983	$0.085837
Chile peso:	
September 19–22, 1983	.012225
September 23, 1983	.012107
Colombia peso:	
September 19–22, 1983	.012092
September 23, 1983	.012034
Greece drachma:	
September 19, 1983	.010753
September 20, 1983	.010718
September 21, 1983	.010735
September 22, 1983	.010741
September 23, 1983	.010764
Indonesia rupiah:	
September 19–22, 1983	.001013
September 23, 1983	.001015

Israel shekel:	
September 19–22, 1983	$0.016181
September 23, 1983	.016000
Peru sol:	
September 19–23, 1983	.000498
South Korea won:	
September 19–23, 1983	.001264

(LIQ–03–01 S:C:I)

Dated: September 23, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83–224)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
September 26–30, 1983	$0.085837
Chile peso:	
September 26–30, 1983	.012107
Colombia peso:	
September 26–29, 1983	.012034
September 30, 1983	.011976
Greece drachma:	
September 26, 1983	.010776
September 27, 1983	.010753
September 28, 1983	.010782
September 29, 1983	.010787
September 30, 1983	.010793
Indonesia rupiah:	
September 26–29, 1983	.001015
September 30, 1983	.001016

Israel shekel:	
September 26, 1983	$0.015873
September 27–29, 1983	.015765
September 30, 1983	.015625
Peru sol:	
September 26–29, 1983	.000498
September 30, 1983	.000489
South Korea won:	
September 26–30, 1983	.001264
Taiwan dollar:	
September 26–30, 1983	.025368

(LIQ-03-01 S:C:I)

Dated: September 30, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-225)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-161 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 1, 1983	$0.052784
September 2, 1983	.052798
Belgium franc:	
September 1, 1983	.018467
September 2, 1983	.018443
Brazil cruzeiro:	
September 1–2, 1983	.001490
Denmark krone:	
September 1–2, 1983	.103082
France franc:	
September 1–2, 1983	.123305

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Germany deutsche mark:	
September 1, 1983	$0.370920
September 2, 1983	.370989
Hong Kong dollar:	
September 1, 1983	.132444
September 2, 1983	.131536
Ireland pound:	
September 1, 1983	1.1675
September 2, 1983	1.1665
Italy lira:	
September 1, 1983	.000622
September 2, 1983	.000623
Netherlands guilder:	
September 1, 1983	.331840
September 2, 1983	.331785
Portugal escudo:	
September 1, 1983	.008032
September 2, 1983	.008006
Sri Lanka rupee:	
September 1, 1983	.041051
September 2, 1983	.041034
Venezuela bolivar:	
September 1, 1983	.066667
September 2, 1983	.068966

(LIQ-03-01 S:C:I:)

Dated: September 2, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-226)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-161 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

September 5, 1983 Holiday use rates for September 2, 1983.

Austria schilling:	
September 6, 1983	$0.053128
September 7, 1983	.052917
Belgium franc:	
September 6, 1983	.018543
September 7, 1983	.018505
September 8, 1983	.018553
September 9, 1983	.018601
Brazil cruzeiro:	
September 6–9, 1983	.001460
Denmark krone:	
September 6, 1983	.103778
September 7, 1983	.103627
France franc:	
September 6, 1983	.123916
September 7, 1983	.123579
September 8, 1983	.123931
September 9, 1983	.124339
Germany deutsche mark:	
September 6, 1983	.373065
September 7, 1983	.372024
September 8, 1983	.373552
Hong Kong dollar:	
September 6, 1983	.130804
September 7, 1983	.129450
September 8, 1983	.130378
September 9, 1983	.130591
Ireland pound:	
September 6, 1983	1.1731
September 7, 1983	1.1702
September 8, 1983	1.1723
September 9, 1983	1.1725
Italy lira:	
September 6, 1983	.000625
September 7, 1983	.000623
September 8, 1983	.000625
September 9, 1983	.000627
Netherlands guilder:	
September 6, 1983	.333389
September 7, 1983	.332834
Portugal escudo:	
September 6, 1983	.008058

September 7, 1983	$0.008019
September 8, 1983	.008035
September 9, 1983	.008052
Sri-Lanka rupee:	
September 6–9, 1983	.041034
Venezuela bolivar:	
September 6–8, 1983	.068966
September 9, 1983	.069444

(LIQ–03–01 S:C:I)

Dated: September 9, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information.

(T.D. 83–227)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83–161 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 13, 1983	$0.053043
September 14, 1983	.052987
September 15, 1983	.053100
Belgium franc:	
September 13, 1983	.018512
September 14, 1983	.018457
September 15, 1983	.018512
September 16, 1983	.018570
Brazil cruzeiro:	
September 12–13, 1983	.001460
September 14–16, 1983	.001427
Denmark krone:	
September 13, 1983	.103869
September 14, 1983	.103756

France franc:	
September 13, 1983	$0.123495
September 14, 1983	.123305
September 15, 1983	.123640
September 16, 1983	.124224
Germany deutsche mark:	
September 13, 1983	.373134
September 14, 1983	.372204
September 15, 1983	.373204
Hong Kong dollar:	
September 12, 1983	.130378
September 13, 1983	.127470
September 14, 1983	.127348
September 15, 1983	.127226
September 16, 1983	.125313
Ireland pound:	
September 13, 1983	1.1700
September 14, 1983	1.1680
September 15, 1983	1.1700
September 16, 1983	1.1715
Italy lira:	
September 12, 1983	.000629
September 13, 1983	.000625
September 14, 1983	.000622
September 15, 1983	.000623
September 16, 1983	.000626
Netherlands guilder:	
September 13, 1983	.333556
September 14, 1983	.332834
September 15, 1983	.333834
Portugal escudo:	
September 12, 1983	.008078
September 13, 1983	.008035
September 14–15, 1983	.008010
September 16, 1983	.008026
Sri Lanka rupee:	
September 12–15, 1983	.041034
September 16, 1983	.040950
Venezuela bolivar:	
September 12–15, 1983	.069444
September 16, 1983	.074074

(LIQ-03-01 S:C:I)

Dated: September 16, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-228)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-161 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 23, 1983	$0.053121
Belgium franc:	
September 19, 1983	.018612
September 20, 1983	.018591
September 21, 1983	.018567
September 22, 1983	.018471
September 23, 1983	.018632
Brazil cruzeiro:	
September 19-21, 1983	.001427
September 22-23, 1983	.001391
Denmark krone:	
September 22, 1983	.103869
France franc:	
September 19, 1983	.124425
September 20, 1983	.123954
September 21, 1983	.124085
September 22, 1983	.123289
Germany deutsche mark:	
September 22, 1983	.372787
Hong Kong dollar:	
September 19, 1983	.119048
September 20, 1983	.120482
September 21, 1983	.122399
September 22, 1983	.121212
September 23, 1983	.114943

Ireland pound:	
September 19, 1983	$1.1772
September 20, 1983	1.1768
September 21, 1983	1.1750
September 22, 1983	1.1680
September 23, 1983	1.1780
Italy lire:	
September 19, 1983	.000627
September 20, 1983	.000624
September 21, 1983	.000624
September 22, 1983	.000615
September 23, 1983	.000622
Netherlands guilder:	
September 22, 1983	.333167
Portugal escudo:	
September 19, 1983	.008045
September 20, 1983	.008052
September 21, 1983	.008039
September 22, 1983	.008026
September 23, 1983	.008035
Sri Lanka rupee:	
September 19–22, 1983	.040950
September 23, 1983	.040933
Venezuela bolivar:	
September 19, 1983	.074074
September 20–22, 1983	.074627
September 23, 1983	.076336

(LIQ–03–01 S:C:I)

Dated: September 23, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83–229)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from

the quarterly rate published in Treasury Decision 83-161 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Belgium franc:	
September 26, 1983	$0.018657
September 27, 1983	.018601
September 28, 1983	.018664
Brazil cruzeiro:	
September 26–28, 1983	.001391
September 29–30, 1983	.001355
France franc:	
September 27, 1983	.124332
Hong Kong dollar:	
September 26, 1983	.119760
September 27, 1983	.119048
September 28, 1983	.121212
September 29, 1983	.123153
September 30, 1983	.122699
Ireland pound:	
September 27, 1983	1.1758
Italy lira:	
September 26, 1983	.000624
September 27, 1983	.000623
September 28, 1983	.000625
September 29, 1983	.000625
September 30, 1983	.000627
Mexico peso:	
September 29, 1983	.006329
Portugal escudo:	
September 26, 1983	.008065
September 27, 1983	.008032
September 28, 1983	.008058
September 29, 1983	.008029
September 30, 1983	.008052
Sri Lanka rupee:	
September 26–29, 1983	.040933
September 30, 1983	.040984
Venezuela bolivar:	
September 26–29, 1983	.076336
September 30, 1983	.078125

(LIQ-03-01 S:C:I)

Dated: September 30, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

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19 CFR Parts 4 and 10

(T.D. 83-214)

Customs Regulations Amendments Relating to the Vessel Documentation Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in a document which clarified the documentation procedure for U.S. vessels engaged in various trades and defined clearly the types of supplies and equipment for vessels which are exempt from the payment of Customs duties and internal revenue taxes. The document was published in the Federal Register on Thursday, October 13, 1983 (48 FR 46510).

FOR FURTHER INFORMATION CONTACT: Harold Singer, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

BACKGROUND

In FR Doc. 83-27827, appearing at page 46510, in the issue of October 13, 1983, on page 46514, item 27, under the heading for section 4.96, erroneously amended Part 4, Customs Regulations (19 CFR Part 4), by removing section 4.96(h). The correct section to be removed was section 4.96(i), not section 4.96(h). Thus, the corrected listing for section 4.96 should be as follows:

§ 4.96 [Amended]

27. Part 4 is further amended by removing section 4.96(i) and footnotes 131b and 132c.

Dated: October 21, 1983.

B. JAMES FRITZ,
Director, Regulations Control
and Disclosure Law Division.

[Published in the Federal Register, October 31, 1983 (48 FR 50075)]

U.S. Customs Service

General Notice

Application for Recordation of Trade Name: "ZAHNRADFABRIK FRIEDRICHSHAFEN, AG."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ZAHNRADFABRIK FRIEDRICHSHAFEN, AG.," used by Zahnradfabrik Friedrichshafen, AG., a corporation organized under the laws of West Germany, located at D–7990 Friedrichshafen 1, West Germany.

The application states that the trade name is used in connection with the following merchandise manufactured and distributed throughout the world: gear units for machines; machine parts; brake testing stands; testing instruments and parts for land vehicles.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before December 27, 1983.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: October 21, 1983.

MARILYN G. MORRISON,
Acting Director, Entry Procedures
and Penalties Division.

[Published in the Federal Register, October 27, 1983 (48 FR 49723)]

U.S. Court of Appeals for the Federal Circuit

(Appeal No. 83-578)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (A.K.A. COMPACT) AND THE IMPORTS COMMITTEE, TUBE DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION, APPELLANTS *v.* UNITED STATES, APPELLEE

(Decided: May 2, 1983)

Paul D. Cullen, of Washington, D.C., argued for appellant. With him on the brief were *Robert L. Meuser* and *Jeanne M. Forch.*

David M. Cohen, of Washington, D.C., argued for appellee. With him on the brief was *J. Paul McGrath,* Assistant Attorney General.

Barton C. Green, of Washington, D.C., was on the brief for Amicus Curiae American Iron and Steel Institute.

Frederick L. Ikenson, of Washington, D.C., was on the brief for Amicus Curiae Zenith Radio Corporation. *Philip J. Curtis,* of Glenview, Illinois, of counsel.

Before MARKEY, *Chief Judge,* DAVIS, NICHOLS, BALDWIN, and NIES, *Circuit Judges.*

NIES, *Circuit Judge.*

This appeal is from the grant of summary judgment by the Court of International Trade (trial court) in favor of the Government on all counts of the amended complaint of appellants, Committee to Preserve American Color Television and The Imports Committee, Tube Division, Electronic Industries Association (COMPACT), to the extent that the complaint raised justiciable issues. Appellants seek to set aside settlement agreements concerning dumping duties on entries of certain television receivers imported from Japan. The jurisdiction of this court if founded on 28 U.S.C. § 1295(a)(5). Having considered each of the matters asserted by COMPACT as error in the decision of the Court of International Trade, as well as the arguments of the amici curiae, we affirm.

I

BACKGROUND

On April 28, 1980, the Government announced that the Secretary of Commerce had reached agreement with importers of Japanese television receivers to compromise claims for dumping duty assess-

ments arising under T.D. 71-76, 5 Cust. Bull. 151 (1971), on receivers entered between March 1972 and March 31, 1979, and on that date executed settlement agreements with a number of the importers.

Upon learning of these settlement agreements, one of the amici to this appeal, Zenith Radio Corporation (Zenith), filed suit in the United States Customs Court, now the United States Court of International Trade, seeking to enjoin their implementation. Subsequently, appellants herein, COMPACT, filed a similar complaint containing allegations virtually identical to those made by Zenith. Consolidation of the suit has been opposed by Zenith and COMPACT and the cases have proceeded slightly out of phase with each other.

The original complaints asserted that the Secretary of Commerce lacked authority to settle dumping duty claims (first count) and that, even if such power existed, it was being exercised in bad faith (second count). Summary judgement was granted in favor of the Government on count I. *Zenith Radio Corp.* v. *United States,* 1 CIT 180, 509 F. Supp. 1282 (1981), and *COMPACT* v. *United States,* 2 CIT —, 527 F. Supp. 341 (1981).

In the initial stages of the *Zenith* case, a dispute arose over discovery relating to information supplied to the Government by a non-party, Montgomery Ward & Co. Inc. (Wards). Wards appealed the court's order which directed the Government to turn over Wards' confidential business records to Zenith. The appeal was heard by the United States Court of Customs and Patent Appeals, one of the predecessors of this court. *Montgomery Ward & Co.* v. *Zenith Radio Corp.,* 673 F.2d 1254 (CCPA), *reh'g denied,* No. 81-24 (CCPA Order entered May 13, 1982), *cert. denied sub nom. Zenith Radio Corp.* v. *United States,* 103 S. Ct. 256 (1982) (hereinafter "*Montgomery Ward*").

In *Montgomery Ward* the court held that the Secretary possessed the requisite authority to settle dumping duty claims under section 617 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1617 (1976) (hereinafter "section 617"). 673 F. 2d at 1259-60.

The court further held that, in challenging the exercise of that authority, Zenith's complaint was directed to matters outside the permissible scope of judicial review, and that "[a]t most, Zenith may press inquiry into whether the procedural requirements for settlement [set out in section 617] were satisfied." *Id.* at 1264. It was, thus, ordered that the complaint filed by Zenith be dismissed for lack of jurisdiction. *Id.* at 1265. Further details regarding the subject settlements appear in *Montgomery Ward* and will not be recounted here.

II

After the Supreme Court denied certiorari in *Montgomery Ward,* Zenith and COMPACT were granted leave to amend their com-

plaints. *Zenith Radio Corp.* v. *United States,* 3 CIT —, Slip Op. 82-98, 16 Cust. Bull. and Dec., No. 49, 47 (1982); *COMPACT* v. *United States,* 3 CIT —, 551 F. Supp. 1142, 1143, n.1 (1982). Both amended complaints urge five grounds for enjoining the subject settlement agreements. Again, the two law suits were not consolidated (Zenith appears here as amicus curiae).

The Court of International Trade, relying on *Montgomery Ward,* denied COMPACT's motion for a preliminary injunction, *COMPACT* v. *United States,* 3 CIT —, 551 F. Supp. 1142 (1982), and consolidated the hearing on the motion with trial on the merits and granted judgment in favor of the Government on all counts. *COMPACT* v. *United States,* 3 CIT —, Slip Op. 82-101, 16 Cust. Bull. and Dec., No. 49, 55 (1982). This appeal followed.

III

A

Count I raises anew the challenge to the Secretary's authority to "compromise the assessment of antidumping duties" under section 617. The Court of International Trade held that consideration of that issue was precluded under the doctrine of *stare decisis.*

It is asserted here that the issue of whether the Secretary has settlement authority was neither before the court, nor decided, in *Montgomery Ward.* COMPACT would construe the *Montgomery Ward* decision as though the appeals court had merely been "assuming the power to settle existed in the first instance."

Contrary to appellants' view, the decision of the court was explicit inasmuch as the resolution of this issue was a necessary predicate to its decision on the jurisdictional question. Arguments on the issue of the Secretary's power were of record and considered prior to the *Montgomery Ward* decision, were considered again on the petition for rehearing (in which COMPACT participated as amicus curiae), and have been reconsidered in this appeal. We remain unpersuaded that section 617 does not include the power to settle dumping duty claims, or that the Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144 (1979), altered or limited that power.

B

Counts II-IV purport to allege violations of the procedural mandates of section 617. These allegations were considered by the trial court in accordance with the decision in *Montgomery Ward.*

The provisions of section 617 are as follows:

> Upon a report by a customs officer, district attorney, United States Attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Sec-

retary of the Treasury is hereby authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

The responsibility for administration of the anti-dumping laws, and specifically all functions of the Secretary of the Treasury and the General Counsel of the Department of the Treasury, were transferred to the Secretary of Commerce by Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 Fed. Reg. 69273, 69275, 93 Stat. 1381 (1979), including specifically, the authority to compromise claims under section 617 (§ 5(a)(1)(G)). *See* 19 U.S.C. § 2171 note (Supp. III 1979).

The Court of International Trade carefully reviewed each deficiency asserted by COMPACT and found that the procedures had been satisfied and that certain of the deficiencies asserted were not proper for judicial inquiry. We find no error in the trial court's legal standards and agree with its conclusion on each of these matters.

C

Count II alleges that there was no "report" which satisfies the opening clause of section 617. (Section 617 report.)

The administrative record discloses a comprehensive memorandum dated April 28, 1980, from Homer E. Moyer, Jr., the General Counsel of the Department of Commerce to the Secretary (together with a letter of transmittal of the same date recommending settlement) which, COMPACT does not dispute, addresses each of the criteria required in a section 617 report.[1]

COMPACT urges that this report does not satisfy section 617 for the reason that the General Counsel *himself* is not qualified under the statute to make the report. COMPACT argues that it must be prepared by some "other person." The trial court reasoned that this argument "leads to the incongruous result that although one of Mr. Moyer's subordinates could serve as a section 617 'special attorney,' and could prepare a section 617 report under the supervision of Mr. Moyer, Mr. Moyer himself could not do so." *COMPACT v. United States,* 3 CIT at —, 551 F. Supp. at 1145. While procedures set forth in section 617 must be fully adhered to, we agree with the trial judge that "[n]o rule of construction necessitates * * * acceptance of an interpretation resulting in patently absurd consequences." *Id.,* and cases cited.

COMPACT also argues that the report is defective because it treats all of the claims as a class rather than treating each importer separately. Given the comprehensive class-wide nature of the

[1] As one of the attachments to that memorandum, the General Counsel included a status report on the subject dumping proceedings, dated February 19, 1980, from the Commissioner of Customs to the Acting Under Secretary of Commerce prepared and sent pursuant to the latter's request. While that status report also addresses the criteria of a section 617 report, COMPACT argues that technically the Commissioner did not have "charge" of the claims which were being settled by the Secretary of Commerce. We do not agree, under the circumstances here, where the Commissioner's report was specifically prepared in response to a request from Commerce for use in connection with settlement of these claims, that the report was not by an officer "having charge."

settlement, we agree with the trial court that class-wide comprehensive treatment of the claims in the report is permissible. *Id.* at 1145–46.

D

Count III alleges that the General Counsel's recommendation contained "statements and opinions of law and fact that were false, misleading, and not supported by the record upon which the Secretary's decision was required to be based." COMPACT does not seek to set aside the settlement because the recommendation was not made. Rather, the court is asked to review the contents of that recommendation for accuracy and validity. Such an inquiry falls squarely within the proscription of *Montgomery Ward,* 673 F. 2d 1263–64, and the trial court properly refused to undertake the task.

E

Count IV alleges that the decision to settle was made by the Secretary before he received the General Counsel's recommendation. COMPACT further alleges that the "administrative record * * * does not reflect whether the Secretary actually received and read the General Counsel's recommendation." Finally, COMPACT asserts that even if received and read, the Secretary had insufficient time to comprehend the facts of a case of this "magnitude and complexity." These contentions must fail.

Without question, the Secretary should make a reasoned decision based on all of the required information, *see, e.g., Calvert Cliffs Coordinating Committee, Inc.* v. *AEC,* 449 F. 2d 1109 (D.C. Cir. 1971). However, that only a few hours were available between receipt of the report and execution of settlement agreements raises no presumption that he had not done so. *National Nutritional Foods Association* v. *FDA,* 491 F. 2d 1141, 1144–45 (2d Cir. 1974). Moreover, COMPACT does not, and could not, assert that the report was the Secretary's introduction to the case. Without question he had been monitoring developments closely. The record precludes any inference that the Secretary was uninformed.

The Supreme Court has instructed that it would be beyond the proper role of the courts to inquire of the Secretary what weight he gave to the various factors in reaching his decision here, *United States* v. *Morgan,* 313 U.S. 409, 421–22 (1941) (*Morgan IV*), and, in any event, the Secretary is not limited solely to the factors explicated in these reports. *Montgomery Ward,* 673 F. 2d at 1264. The statute requires that settlement be entered into only after the necessary reports are received by the Secretary and that the Secretary make the settlement decision. These requirements are clearly satisfied here.

IV

Count V alleges that the exercise of settlement authority was "undertaken in bad faith and in conscious disregard for the procedures mandated by [section 617]." COMPACT asserts that the General Counsel's recommendation understated the maximum amount of duties the Government might collect absent settlement and, further, that he failed to inform the Secretary that the duties could be higher if domestic producers successfully challenged the methodology used by the Commerce Department in the duty calculations.

With respect to possible differences in the figures supplied by the General Counsel, the court in *Montgomery Ward* held, 673 F. 2d at 1264, "[p]roving that the estimate in the report * * * was lower than what Zenith considers reasonable does not destroy the lawfulness of [*the Secretary's*] decision." (Emphasis added.) The trial court, as it also did with respect to count III, correctly declined COMPACT's invitation to inquire into the General Counsel's motivation.

CONCLUSION

The judgment of the Court of International Trade is *affirmed.* The injunction pending appeal is dissolved.

AFFIRMED

(Appeal No. 83-590)

ZENITH RADIO CORPORATION, APPELLANT *v.* UNITED STATES, ET AL., APPELLEES

(Decided: June 27, 1983)

Frederick L. Ikenson, of Washington, D.C., argued for appellant. With him on the brief were *J. Eric Nissley* and *Philip J. Curtis,* of Glenview, Illinois, of counsel.

Sheila N. Ziff, of Washington, D.C., argued for appellee. *Robert H. Huey* and *Rodney F. Page,* of Washington, D.C., were on the brief for appellees, Toshiba Corporation, Toshiba America, Inc., and Toshiba Hawaii, Inc.

Lawrence R. Walders, of Washington, D.C., argued for intervenors. With him on the brief were *H. William Tanaka* and *Patrick O'Leary.*

Stuart M. Rosen, of New York, New York, was on the brief for Defendant-Intervenor, Matsushita Electric Industrial Co., LTD, et al.

Gail T. Cumins, of New York, New York, was on the brief for Defendant-Intervenor, Sanyo Electric, Inc.

Peter J. Gartland, of New York, New York, was on the brief for Defendant-Intervenor Sharp Electronic Corporation.

Thomas P. Ondeck, of Washington, D.C., was on the brief for Defendant-Intervenors, Mitsubishi Electornic Corporation, and Mitsubishi Electric Sales America, Inc.

Brian S. Goldstein, of New York, New York, was on the brief for Defendant-Intervenor, The General Corporation of Japan.

Before *Markey, Chief Judge,* DAVIS, NICHOLS, BALDWIN, and NIES, *Circuit Judges.*

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BALDWIN, *Circuit Judge.*

This appeal is from a decision of the United States Court of International Trade (trial court) denying the request of Zenith Radio Corporation (Zenith) for a preliminary injunction to prevent liquidation of entries of certain television receivers subject to dumping duties. The trial court's denial of injunctive relief was based on a finding that Zenith failed to show that it will suffer irreparable harm in the absence of an injunction. We reverse and remand.

BACKGROUND

Zenith, a United States manufacturer of television receivers, filed an action in the trial court in June, 1981, challenging an annual review determination by the United States Department of Commerce (Commerce), published in the Federal Register on June 5, 1981, 46 Fed. Reg. 30163. The challenged annual review was undertaken pursuant to section 751 of the Trade Agreements Act of 1979, which requires Commerce to review certain antidumping duty orders and findings each year. 19 USC 1675 (Supp. V 1981) (hereinafter section 751). The review determination establishes the margins used to calculate the amount of dumping duties to be assessed on merchandise entered during the one year period under review. In addition to setting the margin used to assess dumping duties on entries of merchandise during the one year review period, the review determination is used to estimate the amount importers must deposit on entries occurring after the review period ends until Commerce completes and publishes the next section 751 review. 19 USC 1675(a)(2) (Supp. V 1981).

The determination challenged by Zenith alters the margins used to assess dumping duties on entries of Japanese television receivers subject to dumping duties under T.D. 71-76, 5 Cust. Bull. 151 (1971). The merchandise involved in this case was entered or withdrawn from warehouse between April 1, 1979 and March 31, 1980 (the 1979-80 review period). For the importers involved in this case, the determination reduces the dumping margins previously required under T.D. 71-76 so that zero or minimal dumping duties will be assessed on entries during the review period. A decision in Zenith's favor on the issues raised by its action challenging the annual review determination could significantly increase the amount of dumping duty that should be assessed on the entries that occurred during the 1979-80 review period. Since Commerce has not completed the next section 751 review of T.D. 71-76, the determination challenged by Zenith is still used to estimate deposit amounts for entries after March 31, 1980. The next published section 751 review will abrogate the effect of the challenged determination on deposit amounts by establishing the margin to be used for assessment of actual dumping duties on entries after March 31, 1980, and for estimating deposit amounts on subsequent entries. The errors complained of by Zenith are not alleged to be continued

in subsequent reviews by Commerce. Zenith's action is directed only to the review determination for the 1979–80 review period.

On December 10, 1981, Zenith moved for a preliminary injunction *pendente lite* to prevent liquidation of entries of merchandise occurring during the 1979–80 review period. The government agreed not to liquidate the subject entries until the trial court could rule on the request for a preliminary injunction. On November 18, 1982, the trial court denied Zenith's request for a preliminary injunction on the sole ground that Zenith failed to demonstrate a likelihood of irreparable injury in the absence of an injunction. The trial court did not consider any other factors traditionally assessed in deciding whether injunctive relief should be granted or denied. Zenith appealed to this court from the trial court's decision and was granted an injunction against liquidation pending this court's decision. In addition to the United States government, importers and manufacturers who were defendant-intervenors at the trial level filed a brief and appeared as appellees in opposition to Zenith's appeal.

On appeal, Zenith raises three issues: (1) whether an injunction must issue under the All Writs Act, 28 USC 1651 (1980), to preserve this court's and the trial court's jurisdiction to review the challenged annual review determination; (2) whether the trial court abused its discretion by considering only irreparable injury instead of considering all factors traditionally assessed in deciding whether or not an injunction should issue; and (3) whether irreparable injury has been established. We hold that Zenith has established irreparable injury sufficient to require the trial court to consider all appropriate factors in deciding whether to grant or deny an injunction.

OPINION

To support its request for an injunction under the All Writs Act, Zenith relies primarily on two cases of the United States Supreme Court: *FTC* v. *Dean Foods Co.*, 384 U.S. 597 (1966); and *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U.S. 4 (1942). These cases confirm the authority of appellate courts to entertain requests for injunctiove relief under the All Writs Act, but they do not compel issuance of an injunction in any particular circumstances. In this case the trial court has acted on Zenith's motion for a preliminary injunction, denying relief for Zenith's failure to establish irreparable harm. Our task is to determine whether the trial court committed an error of law or abused its discretion in denying Zenith's request. *S. J. Stile Assoc. Ltd.* v. *Snyder*, 646 F. 2d 522 (CCPA 1981). In view of our holding that Zenith has established irreparable injury, we do not reach the issue of the need for an injunction under the All Writs Act to preserve jurisdiction.

To prevail on its motion for a preliminary injunction, Zenith must show (1) that it will be immediately and irreparably injured;

(2) that there is a likelihood of success on the merits; (3) that the public interest would be better served by the relief requested; and (4) that the balance of hardship on all the parties favors the petitioner. *S. J. Stile Assoc. Ltd.* v. *Snyder,* 646 F.2d at 525; *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F. 2d 921, 925 (D.C. Cir. 1958). The burden that Zenith must meet to establish irreparable injury was elaborated by the CCPA in the *Stile* case as follows:

> Only a viable *threat of serious harm which cannot be undone* authroizes exercise of a court's equitable power to enjoin before the merits are fully determined. *Parks* v. *Dunlop,* 517 F. 2d 785 (CA 5 1975). A preliminary injunction will not issue simply to prevent a mere possibility of injury, even where prospective injury is great. A presently existing, actual threat must be shown.

646 F. 2d at 525. (Emphasis added). (Citations omitted.) To establish a "viable threat of serious harm that cannot be undone," Zenith contends that without an injunction, it will be deprived of any opportunity to obtain a remedy for assessment of inadequate dumping duties on entries during the 1979–80 review period. The loss of a remedy for assessment of inadequate dumping duties would relieve Zenith's competitors of a significant liability and abrogate Zenith's right to judicial review.

The trial court, however, denied injunctive relief because Zenith did not submit facts or data showing specific commercial injury that Zenith will suffer as a result of liquidation. The trial court supported its conclusion that liquidation cannot constitute irreparable harm, absent such a specific showing of injury, with statements made by Congress when the Customs Court (now the Court of International Trade) was given authority in 1979 to enjoin liquidation. Congress then characterized injunctive relief as an extraordinary measure, a form of relief that should not be granted in the ordinary course of events. *Zenith Radio Corp.* v. *United States,* 553 F. Supp. 1052, 1054 (CIT 1982). The comments relied on by the trial court simply explained why Congress specified four criteria, parallel to those recited in *Stile,* that the Customs Court had to consider before enjoining liquidation. We agree that injunctive relief is to be granted only in extraordinary circumstances. We also acknowledge that evidence of specific competitive injury to Zenith would establish a more compelling showing of irreparable injury warranting injunctive relief. *Smith-Corona Group, Consumer Products Division* v. *U.S.,* 507 F. Supp. 1015 (CIT 1980). But general statements regarding the extraordinary nature of preliminary injunctive relief do not help resolve whether Zenith has shown irreparable injury needed to at least preclude denial of an injunction without consideration of the other factors recited in *Stile.* Analysis of the issue in this case must begin with the effect of liquidation on Zenith's challenge to the section 751 review determination.

In this case, we conclude that liquidation would indeed eliminate the only remedy available to Zenith for an incorrect review determination by depriving the trial court of the ability to assess dumping duties on Zenith's competitors in accordance with a correct margin on entries in the 1979–80 review period. The result of liquidating the 1979–80 entries would not be economic only. In this case, Zenith's statutory right to obtain judicial review of the determination would be without meaning for the only entries permanently affected by that determination. In the context of Congressional intent in passing the Trade Agreements Act of 1979 and the existing finding of injury to the industry underlying T.D. 71–76, we conclude that the consequences of liquidation do constitute irreparable injury.

Without a preliminary injunction, all of the entries occurring during the review period will be liquidated immediately, with dumping duties assessed in accordance with the margin set by the review determination. This result is required, in the absence of a preliminary injunction, by two sections of the Trade Agreements Act of 1979. Section 516a(e) permits liquidation in accordance with a favorable decision of the trial court, or this court, only on merchandise entered after the court decision is published or on entries "the liquidation of which was enjoined under subsection (c)(2)." 19 USC 1516a(e) (Supp. V 1981). In addition, section 516a(c)(1) of the Trade Agreements Act of 1979 provides, in pertinent part:

> (c) *Liquidation of entries.*
> (1) *Liquidation in accordance with determination.* Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, of the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission * * *.

19 USC 1516a(c)(1) (Supp. V 1981).

The statutory scheme has no provision permitting reliquidation in this case or imposition of higher dumping duties after liquidation if Zenith is successful on the merits. Once liquidation occurs, a subsequent decision by the trial court on the merits of Zenith's challenge can have no effect on the dumping duties assessed on entries of television receivers during the 1979–80 review period. Any change in deposit amounts that might be required would be transient and could not affect the amount of dumping duty actually assessed on the 1979–80 entries or any subsequent entries. The court would be powerless to grant the only effective remedy in response to Zenith's request for review: assessment of correct dumping duties on entries occurring during the 1979–80 review period. Not even prospective relief will be available to Zenith for entries in the 1979–80 review period once liquidation occurs. Judicial review of

the challenged section 751 determination will therefore provide no tangible benefit for Zenith, making that review unavailing. Even though the 1979–80 imported articles have already been sold and the increased duties (if Zenith ultimately prevails) will go to the government, not Zenith, Zenith still has a strong, continuing, commercial-competitive stake in assuring that its competing importers will not escape the monetary sanctions deliberately imposed by Congress. Defeat of that strong congressionally recognized competitive interest and the abrogation of effective judicial review are sufficient irreparable injury here.

One of the factors supporting our conclusion, and setting this case apart from others, is the fact that injury to the domestic television industry from dumping of television receivers by Japanese importers has already been established.

The United States Tariff Commission (now, International Trade Commission (ITC)) determined that the domestic television industry is being injured by dumped imports from Japan in 1971. *Television Receiving Sets From Japan,* Investigation No. AA1921–66, USTC Public. 367, 36 Fed. Reg. 4576 (1971). This finding of injury was one of the conditions precedent to publication of T.D. 71–76. The continuing merit of the injury determination was recently confirmed when the ITC reconsidered but refused to revoke the earlier injury determination. *Television Receiving Sets From Japan,* Investigation No. 75–TA–2, USITC Public. 1153, 46 Fed. Reg. 32702 (1981). The finding of injury from dumped merchandise to the domestic television industry, which includes Zenith, is therefore presumed to have continuing efficacy now and throughout the challenged 1979–80 review period. The only remedy available to Zenith, the domestic television industry, and the public, is assessment of correct dumping duties on offending merchandise.

A second factor important to our decision is the desire for effective enforcement of antidumping laws expressed by Congress when it passed the Trade Agreements Act of 1979. Before passage of the Trade Agreements Act of 1979, the remedy for a domestic manufacturer challenging the margin used for assessment of dumping duties was prospective only since a court order increasing the amount of dumping duty that was appropriate could only be applied to entries occurring after the final court order was published. The Trade Agreements Act of 1979 altered this scheme by giving the Customs Court power to enjoin liquidation of entries pending the court's decision. 19 USC 1516a(c)(2) (Supp. V 1981). The grant of this injunctive authority was described by Congress as "a major change in prior law" which had been formulated on the presumption of correctness of the administrative determination. H.R. Rep. No. 96–317, 97th Cong., 1st Sess. 182 (1979). Congress modified this presumption, without eliminating it, by permitting the Customs Court to enjoin liquidation in appropriate circumstances. The greatest concern warranting modification of the prior law was the

inadequacy of prospective relief. H.R. Rep. No. 96–317, 97th Cong., 1st Sess. 182 (1979).

The grant of this injunctive power was only one part of a larger pattern of reforms enacted to improve enforcement of the antidumping laws and to give domestic interested parties the right to obtain effective judicial review of determinations in antidumping and countervailing duty cases. When explaining changes significantly enlarging the availability and scope of judicial review, Congres said:

> The changes which title X effects are purposed upon the elimination of several discernible deficiencies which detracted from the effective enforcement of earlier laws and particularly those relating to antidumping and countervailing duties. The new provisions contemplate greater access to the Customs Court for an expanded number of parties, more opportunity for interlocutory judicial review during antidumping and countervailing duty processings, and expedited appeals from administrative determinations.
>
> The implementing legislation will preserve an interested party's right to challenge final determinations issued by either the administering authority or the U.S. International Trade Commission in antidumping and countervailing duty cases while enlarging the opportunities for judicial review of interim decisions made during the course of an investigation.

S. Rep. No. 96–249, 96th Cong., 1st Sess. 245, *reprinted in* 1979 U.S. Code Cong. & Ad. News 630–631. Congress deliberately gave interested parties the right to obtain effective judicial review of section 751 review determinations to aid effective enforcement of antidumping laws. A conclusion that no irreparable harm is shown when that judicial review is rendered ineffective by depriving the interested party of the only meaningful correction for the alleged errors, would be inconsistent with the actions taken by Congress to correct deficiencies in prior enforcement activity under the antidumping laws. Accordingly, the inability of reviewing courts to meaningfully correct the review determination is irreparable injury that must be considered by the trial court along with the other pertinent factors recited in *Stile* to determine whether or not an injunction should issue.

We therefore *reverse* and *remand* to the Court of International Trade for further consideration of Zenith's request for preliminary relief.

Reversed and Remanded

(Appeal No. 83–590)

ZENITH RADIO CORPORATION, APPELLANT *v.* UNITED STATES ET AL., APPELLEES

NIES, *Circuit Judge,* concurring.

I concur with the majority that Zenith's motion for a preliminary injunction must be reconsidered by the trial court. However, in my view, Zenith may or may not have proved sufficient injury under the circumstances of this case to warrant the issuance of a preliminary injunction.

I am entirely in agreement with the trial court in rejecting plaintiff's argument that "any liquidation of entries prior to a final decision would constitute irreparable harm *per se*" and that the granting of a preliminary injunction enjoining the administering authorities from liquidating entries should be the exception rather than the general rule. Moreover, I also agree that the requirements which must generally be met before a preliminary injunction is granted are a threat of immediate irreparable harm; a showing that the public interest would be better served by issuing than by denying the injunction; a likelihood of success on the merits; and the balance of hardship on the parties-in-interest favors the party seeking injunctive relief *(S.J. Stile Associates, Ltd.* v. *Dennis Snyder,* 646 F. 2d 522 (CCPA 1981)). However, I am of the view that, while these factors should be analyzed separately, they must be evaluated as a whole.

A very strong showing of public interest in preservation of the status quo, for example, may shore up a minimal showing of direct personal injury to the litigant.

Moreover, I do not believe that rigid rules or requirements are appropriate in the exercise of equitable power. Other factors, not enumerated above, may also affect the evaluation of a litigant's need for an injunction.

I see no danger that injunctions against liquidation will become the norm if Zenith is found to be injured on the basis of something less than the detailed showing of harm to its current business comparable to that established by the plaintiff in *Smith-Corona Group, Consumer Products Division* v. *United States,* 507 F. Supp. 1015 (Ct. Int'l Trade 1980). Likelihood of success on the merits and balancing of hardships on the parties present formidable obstacles to the granting of an injunction, particularly where the injury factor is weak.

In this appeal, the trial court's decision presents us with an analysis of the single factor of irreparable harm to Zenith. The finding below was not that Zenith will suffer no harm. Rather, the court held that such harm was not irreparable. In some instances no analysis of other factors may be necessary. However, I think such cases are rare and this case is not one of them. This case, in my view, requires an evaluation and balancing of all factors raised by Zenith.

(Appeal No. 83-641)

SHAW INDUSTRIES, INC., MOHASCO CORPORATION, QUEEN CARPET CORPORATION, and TICE YARNS, APPELLANTS *v.* UNITED STATES, APPELLEE

(Decided: May 27, 1983)

Mark R. Eaton, of Washington, D.C., argued for appellants. With him on the brief were *John B. Rehm* and *Elliott Goldstein*.

Madeline B. Kuflik, of New York, New York, argued for appellee. With her on the brief were *J. Paul McGrath*, Assistant Attorney General, *David M. Cohen*, Director and *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office.

Before BENNETT, MILLER, and SMITH, *Circuit Judges*.

MILLER, *Circuit Judge*.

This case is before us on appeal by Shaw Industries, Inc., from the judgment of the Court of International Trade, 4 CIT —, 554 F. Supp. 1240 (1982), on stipulated facts, sustaining the Government's classification of Shaw's imported machinery under Tariff Schedules of the United States (TSUS) item 670.43 and rejecting Shaw's claimed classification under TSUS item 670.12. We affirm.

Familiarity with the facts set forth in the opinion below is presumed.

The pertinent statutory provisions, found in TSUS, Schedule 6, Part 4, Subpart E, are set forth below:

SCHEDULE 6.—METALS AND METAL PRODUCTS

PART 4.—MACHINERY AND MECHANICAL EQUIPMENT

Subpart E—Textile Machines; Laundry and Dry-Cleaning Machines; Sewing Machines

[Classified]:

	Machinery for washing, cleaning, drying, bleaching, dyeing, dressing, finishing or coating textile filaments, yarns, fabrics or made-up textile articles * * * and parts of such machinery:	
670.43	Other	8% ad val.

[Claimed]:

670.12	Textile reeling or winding machines; textile beaming, warping, or slashing machines, and other textile machines for preparing yarns to be woven, knit, braided, or otherwise made into textile fabrics or other textile articles.	7% ad val.

Pertinent general interpretative rules are as follows:

10. (c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it * * *

10. (d) if two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest * * *.

The Court of International Trade concluded that appellants' imported machinery, the Superba, is a textile finishing machine, thus falling within the item 670.43 classification; further, that the Superba is a textile preparing machine, thus falling within the item 670.12 classification. However, the court held that item 670.43 more specifically describes the Superba than item 670.12, because a machine may only be considered a finishing machine where it performs the last or final process during a particular stage of production; whereas, a machine may be considered a preparing machine during any phase of any stage of production. Therefore, the court reasoned, the possible number of preparing machines is "infinitely large" in comparison to the possible number of finishing machines.

In considering the relative specificity of items 670.12 and 670.43 with respect to the Superba, more is required than a mere comparison between "finishing" machines of item 670.43 and "preparing" machines of item 670.12, because additional words applicable to the Superba are involved in the statute. Thus, item 670.43 relates to other textile machines for "finishing * * * yarns" *generally,* and these "comprise a *multitude* of fibers or filaments that have been separated, made parallel, overlapped, and twisted together." (Emphasis added.) [1] In contrast, item 670.12 relates to other textile machines for "preparing yarns to be * * * made into textile fabrics," which is a more specific end use and, therefore, would more specifically describe the Superba, which prepares yarns to be made into tufted carpet *exclusively.* Counterbalancing this is the Government's point that "preparing" relates to any phase of any stage of production and that this less specifically describes the Superba. However, we note that "finishing" by the Superba has at least five phases according to the stipulation: presteaming, heat setting, drying, cooling, and winding onto cones or cylinders. Also, the following quotation from Kirk-Othmer, 22 Encyclopedia of Chemical

[1] 13 McGraw-Hill Encyclopedia of Science and Technology 547 (1977).

Technology 769 (3d ed. 1983) is persuasive that "finishing" is a much broader description than found by the Court of International Trade.

> The principal classes of textile fibers and fabrics include cellulosic, synthetic, protein, glass, and blends. Because of the great differences in the chemical and physical nature of these fibers, finishing processes vary widely among classes and, to a lesser extent, within each class. Mechanical, heat-related, and chemical treatments have been developed over the years since the first attempts to convert fibers into yarns and then into a fabric.
>
> Animal and plant fibers have been used for thousands of years, but the introduction of synthetic fibers into consumer use after World War II caused the most dramatic change in the finishing of natural fibers. * * *
>
> Thus, the general topic of textile finishing is very broad, for there are at least ten commercially important textile fibers today, and finishing processes enhance a wide variety of properties including crease retention, ease of care, dimensional stability, abrasion resistance, flame retardance, smolder resistance, odor control, soil release, variable moisture contents, and control of static charges, stretch, water repellency, waterproofing, and resistance to weathering (including sunlight and microorganisms), as well as improving the hand (or feel) and surface appearance of fabrics. * * *

From all the foregoing, it appears that the specificity of items 670.43 and 670.12 with respect to the Superba may be considered equal. Therefore, in accordance with General Interpretative Rule 10(d), we hold that item 670.43, providing for an original statutory rate of duty higher than item 670.12, applies.[2]

AFFIRMED

(Appeal No. 83–716)

AMERICAN AIR PARCEL FORWARDING COMPANY, LTD., A HONG KONG CORPORATION; and E. C. MCAFEE COMPANY, A MICHIGAN CORPORATION, FOR THE ACCOUNT OF AMERICAN AIR PARCEL FOR-

[2] The statutory rate of duty was 16% for item 670.43 and 14% for item 670.12 when TSUS became effective in 1963.

WARDING COMPANY, LTD., APPELLANTS *v.* UNITED STATES OF AMERICA: THE SECRETARY OF THE TREASURY; UNITED STATES CUSTOMS SERVICE; THE COMMISSIONER OF CUSTOMS, UNITED STATES CUSTOMS SERVICE; THE ASSISTANT COMMISSIONER OF CUSTOMS (COMMERCIAL OPERATIONS), UNITED STATES CUSTOMS SERVICE; DIRECTOR, OFFICE OF REGULATIONS AND RULINGS, UNITED STATES CUSTOMS SERVICE; and DISTRICT DIRECTOR OF CUSTOMS, UNITED STATES CUSTOMS SERVICE, DETROIT, MICHIGAN, JOINTLY AND SEVERALLY, APPELLEES

(Decided: October 14, 1983)

Jonathan Miller, of Southfield, Michigan, and *Richard A. Kulics*, of Centerline, Michigan, argued for appellants.

Joseph I. Liebman, of New York, New York, argued for appellee. With him on the brief were *J. Paul McGrath*, Assistant Attorney General, *David M. Cohen*, Director and *Susan Handler-Menahem*.

Before FRIEDMAN and NIES, *Circuit Judges*, and SKELTON, *Senior Circuit Judge*.

NIES, *Circuit Judge*.

This is an appeal from a final order of the United States Court of International Trade, 557 F. Supp. 605 (Ct. Int'l Trade 1983), dismissing an action in which appellant importers challenge the basis on which the United States Customs Service has made and is making its valuation of made-to-measure clothing produced in Hong Kong. The Court of International Trade held that jurisdiction over the action could not be founded on 28 U.S.C. § 1581 (h) and (i) as asserted by the importers. We affirm.

BACKGROUND

American Air Parcel Forwarding Company, Ltd., a Hong Kong corporation, is a foreign freight consolidator which handled shipments from Hong Kong to the United States of made-to-measure clothing which is the subject of this action.

E.C. McAfee Company is a customshouse broker and is the importer of record of the 12 entries listed in an attachment to the pleadings.

The facts of the transactions are disputed by the parties and we will say only that the subject clothing is custom made by tailors in Hong Kong for individual U.S. customers who order the merchandise in the United States through salesmen for Hong Kong distributors.

The present appeal stems from the efforts of appellants (collectively "importers") to bar the assessment of duty based on the sales price paid by the United States consumer (approximately $200.00). Importers assert that the valuation must be based on the payment in Hong Kong by the distributors to tailors for "cut, make and trim" operations plus the cost of material (approximately $75.00).

While only 12 specific entries are identified in an attachment to the pleadings, appellants assert that hundreds of additional unliquidated entries, as well as future importations, are the subject of the complaint. The complaint itself is couched in broad terms of seeking "review of the arbitrary and capricious revocation of a ruling issued by the U.S Customs Service and the arbitrary and capricious refusal by that agency and its representatives to rescind that revocation." Jurisdiction is asserted under 28 U.S.C. § 1581(h) and (i)(4).[1]

With respect to the identified shipments, these entries were made in Detroit between March 3, 1980, and August 1, 1980, by McAfee, for the account of Air Parcel, who paid estimated duties based on the Hong Kong transactions. Air Parcel billed only this amount to the U.S. consumer in addition to the charge for the merchandise. Apparently other Customs field offices proposed to assess identical merchandise at the price paid by U.S. consumers on the ground that there was no "sale" in Hong Kong within the meaning of the applicable statute. In January 1980 the District Director of Detroit, Michigan, at the behest of the importers, initiated a request for internal advice from the Office of Regulation and Rulings. Based on representations by the importers as to the facts of the Hong Kong apparel trade, the response was made on October 17, 1980, with certain provisos, that:

> *Holding.*—On the basis of the information provided, it is our opinion that the sales between the tailors and distributors in Hong Kong of made-to-measure clothing are appropriate for establishing export value under the new law * * *.

This holding is denominated TAA #10 and was published in the Customs Bulletin on March 11, 1981.

On March 12, 1981, the San Francisco District Director requested Customs Headquarters (Director, Classification and Value Division) to reconsider the holding in TAA #10.

On July 23, 1981, the Customs Service issued a response to the request for reconsideration, affirming TAA #10, but advising that

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[1] 28 U.S.C. 1581 provides in pertinent part:

§ 1581. Civil actions against the United States and agencies and officers thereof

* * * * * * *

(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) Revenue from imports or tonnage;

(2) Tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) Embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) Administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

an investigation to verify the facts upon which the ruling was based had been initiated.

In September 1981 the investigation was completed and the Office of Regulation and Rulings concluded that the trade patterns in the Hong Kong made-to-measure clothing industry conflicted with the pattern stated in the request for internal advice. On September 9, 1981, a telex was transmitted to Customs offices stating the above conclusion and requiring the assessment of duties on the basis of the price paid by the U.S. consumer.

On October 19, 1981, the Customs Service advised Air Parcel by letter that TAA #10 was revoked pursuant to 19 CFR § 177.9(d) and that, pursuant to 19 CFR § 177.9(d)(2)(ii), the revocation was retroactive. This retroactive revocation is the heart of the controversy.

In November 1981 the 12 identified entries were liquidated with duties being assessed on the price paid by U.S. consumers. A protest was duly filed by McAfee on February 1, 1982. On February 4, 1982, no action having been taken on the protest and no payment having been made of liquidated duties, the importers filed a complaint in the Court of International Trade, followed by a motion for preliminary injunction seeking, *inter alia,* cancellation of these liquidations and reinstatement of TAA #10. The Government moved to dismiss for lack of jurisdiction. The court denied the motion to dismiss and granted the motion for a preliminary injunction on August 31, 1982. Within a few days thereafter, the Court of Customs and Patent Appeals handed down a decision in *United States* v. *Uniroyal, Inc.,* 687 F. 2d 467 (CCPA 1982), defining the scope of jurisdiction of the Court of International Trade under 28 U.S.C. § 1581 (h) and (i). On the basis of this decision, the court granted the Government's renewed motion to dismiss and dissolved the injunction by order of January 19, 1983. The importers appeal from this order.

Importers allege that as a practical matter they are unable to collect additional duties from U.S. consumers after merchandise is delivered inasmuch as cost of collection exceeds the amount involved. Because of the revocation of TAA #10, and the greatly increased duties it must pay on hundreds of entries, Air Parcel asserts that it has been driven into bankruptcy.

I

The Court of International Trade, in holding that 28 U.S.C. § 1581(i) did not grant jurisdiction to the court over the complaint, provided the following analysis:

> Reviewing 28 U.S.C. § 1581(i), frequently referred to as the residual or "catch-all" jurisdiction provision, the court finds no legislative intent to grant a litigant use of this forum where the litigant has failed to exhaust the avenue of protest and denial before the Customs Service and payment of liquidated

duties. In the leading case recently issued by the United States Court of Customs and Patent Appeals, (now the United States Court for the Federal Circuit), the court succinctly stated:

> Nevertheless, the legislative history of the Customs Courts Act of 1980 demonstrates that Congress did not intend the Court of International Trade to have jurisdiction over appeals concerning completed transactions when the appellant had failed to utilize an avenue for effective protest before the Customs Service.

The United States v. *Uniroyal, Inc.*, 687 F. 2d 467, 471, Appeal 82-9 (September 2, 1982).

> It is judicially apparent that where a litigant has access to this court under traditional means, such as 28 U.S.C. § 1581(a), it must avail itself of this avenue of approach complying with all the relevant prerequisities thereto. It cannot circumvent the prerequisities of 1581(a) by invoking jurisdiction under 1581(i) * * * .

557 F. Supp. at 607.

The above interpretation of the *Uniroyal* decision is entirely correct. Importers argue, however, that the *Uniroyal* holding itself recognizes that the traditional avenue of protest and appeal under § 158(a) need not be utilized if it does not provide an "effective" remedy, *supra*, or if "inadequate as a matter of due process." (687 F. 2d at 475 Nies, J., concurring).

Importers assert that the § 1581(a) remedy is ineffective, as a matter of due process, in three well defined areas: (1) where a complaint raises a constitutional question, (2) where the Customs regulations have built unconscionable delay into the protest and review procedures, and (3) where procedures to safeguard the rights of the public are violated.

A

In essence, the constitutional issue asserted by importers is that there is a denial of due process whenever an agency fails to follow either a statute or a regulation which has the force of law. "Unlawful actions" by the Government, in the importers' view, "are a direct violation of the Constitution." The importers cite no authority for their proposition nor propose any limitation, and we find the importers' thesis basically unsound. Every instance in which the Government fails to act in accordance with a statute or regulation does not raise a constitutional issue. Indeed, the purpose of judicial review in customs cases is to determine the correctness of governmental action. Thus, the "exception" to the holding of *Uniroyal* which the importers seeks to create appears to us to encompass all such cases. An importer would need only to express a challenge, for example, to valuation which is involved here, in terms of a constitutional wrong. We entirely agree with the Court of International Trade that the traditional avenue of approach to the court under

28 U.S.C. § 1581(a) was not intended to be so easily circumvented, whereby it would become merely a matter of election by the litigant. By artful pleading alone a litigant would be able to change the entire statutory scheme Congress has established. The different requirements of § 1581(a) and § 1581(i) with respect to standing (28 U.S.C. § 2631); statutes of limitation (28 U.S.C. § 2636); amendment of claims (28 U.S.C. § 2638); burden of proof (28 U.S.C. § 2639(a)(1)); and standards of appellate review (28 U.S.C. § 2640) would become optional.

The importers attempt to draw a parallel between the instant case and *Mathews* v. *Eldridge,* 424 U.S. 319 (1976), in which an individual who had been deprived of a disability benefit without a hearing prior to the cancellation of benefits was allowed judicial review of the issue of whether such hearing was necessary as a matter of due process without going through a post-cancellation hearing prescribed by agency regulations. Contrary to the importers' view, the *Eldridge* case does not support their position. In *Eldrige,* the claimant did not seek to avoid the statutory jurisdiction requirements but to invoke the court's jurisdiction pursuant to the statute. Crucial to the *Eldridge* decision on the jurisdictional issue was the holding that the only mandatory jurisdictional requirement necessitated by the statute was a "final decision" by the agency and that this "nonwaivable jurisdictional element was satisfied." 424 U.S. at 329–30.

Unlike *Eldridge,* importers here seek to avoid the jurisdictional prerequisites set up by the statute. The Customs Service may not waive the statutory requirements that a protest must be *filed* to prevent finality of assessments,[2] or that duties must be paid before commencing a civil action involving the protest.[3] These provisions would operate irrespective of a suit under 28 U.S.C. § 1581(i). Moreover, had Air Parcel wished to avoid the financial distress in which it finds itself, judicial relief was available prior to importation under 19 U.S.C. § 1581(h), as discussed *infra.* Importers admittedly were aware prior to the importation of the merchandise that the basis for valuation was disputed and apparently proceeded to enter transactions placing themselves in a precarious position with knowledge of this risk. Their plight cannot be attributed to deficiencies in the statute.

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[2] 19 U.S.C. § 1514(a) provides in pertinent part:

[D]ecisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

* * * * * * *

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or a civil action contesting the denial of a protest, in whole or in part is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 [28 U.S.C. §§ 2631 *et seq.*].

[3] 28 U.S.C. § 2637(a) reads as follows:

A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade, only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced.

That importers here could fashion a more desirable remedy does not make the remedy fashioned by Congress constitutionally inadequate. As stated in *Jerlian Watch Co.* v. *United States,* 597 F. 2d 687, 692 (9th Cir. 1979), a case in which an importer sought relief in district court [4] to avoid the Customs Courts jurisdictional prerequisite of payment of duty:

> Plaintiffs' allegations of financial impossibility, even if accepted as true, do not place them within the "adequate remedy" exception. The dispositive consideration in determining whether plaintiffs have an adequate remedy is the nature of the barrier and not its financial height. Any financial barrier is inherent in the system established by Congress, and must have been recognized by Congress when it enacted 19 U.S.C. § 1514(a). It is true that injunctive and declaratory relief is a more desirable remedy in plaintiffs' view, but "the mere fact that more desirable remedies are unavailable does not mean that existing remedies are inadequate." *J.C. Penney Co.* v. *U.S. Treasury Department,* 439 F. 2d at 68.

B

Contrary to importers' argument, the Customs Service regulations have not built unconscionable delay into the protest procedure. Indeed, a protestor need not await a decision by the agency before filing suit. The regulations provide an accelerated procedure for reaching the court within 120 days. 19 CFR § 174.22(a)-(d). Upon the filing of a suit, the court has discretion to require exhaustion of administrative remedies, 28 U.S.C. § 2637(d), and importers' arguments that the usual requirement to exhaust administrative remedies should be waived would be relevant to the exercise of that discretion. However, importers not only failed to utilize the procedure for obtaining accelerated consideration of its protest but also resorted to additional review procedure, thereby further delaying a Customs Service decision. Thus, importers' argument that relief has been delayed for eighteen months because of the regulations, thereby making judicial review under 5 U.S.C. § 1581(a) deficient as a matter of due process, is wholly without foundation.

C

Importers' final position under 28 U.S.C. § 1581(i) is that the Customs Service must follow its own regulations which are designed to protect the public. While importers devote a substantial portion of their brief to exposition of how the Customs Service violated established procedures, we do not find any relationship between the merits of this argument and the jurisdictional issue. There is no

[4] As discussed in *United States* v. *Uniroyal, Inc.,* 687 F. 2d 467, 475, n. 9 (Nies, J., concurring) enactment of 28 U.S.C. § 1581(i) transferred the subject matter jurisdiction of the district courts to the Court of International Trade.

dispute that the issue of violation of a regulation can be raised in a protest and subsequent civil action.

The decision of the Court of International Trade holding that it lacked jurisdiction to entertain the importers' complaint under 28 U.S.C. § 1581(i) is, accordingly, affirmed.

II

As an alternative basis for jurisdiction, importers rely on 28 U.S.C. § 1581(h). The requirements to invoke this provision are:

> (1) Judicial review must be sought *prior* to importation of goods;
> (2) Review must be sought of a ruling, a refusal to issue a ruling or a refusal to change such ruling;
> (3) The ruling must relate to certain subject matter; and
> (4) Irreparable harm must be shown unless judicial review is obtained *prior to* importation.

The Court of International Trade was persuaded that the term "ruling" in § 1581(h) did not include a response to a request for internal advice. The court stated:

> Of paramount interest is defendants' argument relating to the type of ruling to which section 1581(h) applies. The ruling in issue, TAA #10, is an internal advice ruling which is authorized under Customs regulations, 19 CFR § 177.11. Defendants argue that Congress specifically exempts internal advice ruling from being subject to judicial review under section 1581(h). In support of its contention defendants cite directly a portion of the law's legislative history * * *. "*In determining the scope of the definition of a 'ruling,' the Committee does not intend to include 'internal advice' or a request for 'further review', both of which relate to completed import transactions.* (Emphasis supplied). H.R. Rep. No. 96-1235, *supra,* 46," The Court believes that the underscored legislative history is convincing.

557 F. Supp. at 608.

The Government argues that requests for internal advice can only be made with respect to goods which have been imported. It does appear that § 1581(h) was intended to provide an importer with review of a ruling contained in a "ruling letter" issued to him [19 CFR § 177.9(b)] which can only by obtained prior to importation of goods. The provisions appear to be parallel. However, we do not need to rule on this issue but merely note that the importers failed to utilize this procedure which detracts from their argument of hardship.

The purported basis for invoking § 1581(h) put forth by the importers is that the revocation of TAA #10 affects future imports they plan to make. A similar argument was made and rejected in *Uniroyal,* where the court held, 687 F. 2d at 472:

> In addition, to the extent that Uniroyal's prayer for relief is directed to future importations of uppers and soles, Uniroyal has not demonstrated the "irreparable harm" Congress has required before the trail court can exercise jurisdiction over an appeal of a ruling prior to the importation of goods and the filing and denial of a protest. [Footnote omitted.]

Here, as well, importers have not demonstrated irreparable harm with respect to future imports. The evidence of harm on which they rely is the financial burden of past transactions. No showing of harm has been made with respect to future imports. Moreover, the importers are aware that the increased duty must be taken into account in future dealings with customers.

As a final matter, a § 1581(h) case would not provide relief for past transactions which are the principal subject matter of this complaint. Declaratory relief only is available. 28 U.S.C. § 2643(c)(4).[5]

Thus, importers have wholly failed to meet the requirements of § 1581(h).

III

Finally, the importers claim that the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, (APA) gives the Court of International Trade "the right to fashion the appropriate remedy, without hindrance of the usual procedure, when there are Constitutional violations of the type and nature suffered by American Air." However, clear precedent exists that the APA is not a jurisdictional statute and does not confer jurisdiction on a court not already possessing it. *Califano* v. *Sanders,* 430 U.S. 99 (1977).

Thus, the APA does not give an independent basis for finding jurisdiction in the Court of International Trade. Rather, 28 U.S.C. § 1581 is the jurisdictional statute which governs this case. As the importers have failed to establish jurisdiction under 28 U.S.C. § 1581 for the reasons recited above, the decision of the Court of International Trade is *affirmed.*

AFFIRMED

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[5] 28 U.S.C. 2643(c)(4) reads:
In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

ANNOUNCEMENT

Chief Judge Edward D. Re has announced the call of the First Judicial Conference of the United States Court of International Trade. The Conference will be held on Wednesday, February 15, 1984, in The Ballroom at Windows on the World, 106th Floor, One World Trade Center, New York, New York and will commence at 9 a.m.

Chief Judge Howard T. Markey of the United States Court of Appeals for the Federal Circuit is the Conference Luncheon Speaker.

The Conference will be composed of the Judges of the United States Court of International Trade, officials from the International Trade Commission, the Customs Service, the Departments of Justice, Commerce, and Treasury, members of the Bar of the Court, and other distinguished guests. The theme of the Conference is "The Customs Courts Act of 1980—Three Years Later".

Lawyers and other interested persons are invited to attend. Since capacity is limited, early return of your registration form is suggested. To facilitate final arrangements, it would be appreciated if your registration form is received on or before Friday, January 20, 1984.

For further information, please write to:

"USCIT, Judicial Conference," c/o Office of the Clerk, United States Court of International Trade, One Federal Plaza, New York, New York 10007.

For the Court,

JOSEPH E. LOMBARDI,
CLERK OF COURT.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson
Bernard Newman
Nils A. Boe
Gregory W. Carman

Senior Judges

Herbert N. Maletz

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83-102)

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS

Consolidated Court No. 81-7-00901

Before WATSON, *Judge.*

Motion for Rehearing Denied

(Decided October 13, 1983)

Frederick L. Ikenson, P.C. (Frederick L. Ikenson and *J. Eric Nissley* of counsel) for the defendant-intervenor Zenith Radio Corporation.

United States International Trade Commission, Office of the General Counsel (*Michael H. Stein,* General Counsel; *Michael P. Mabile,* Assistant General Counsel; and *Jane Katherine Albrecht,* Attorney) for the defendant United States.

Weil, Gotshal & Manges (A. Paul Victor, Stuart M. Rosen, Harry M. Davidow and *David S. Friedman* of counsel) for plaintiffs Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, Panasonic Hawaii, Inc., and Panasonic Sales Company, a Division of Matsushita Electric of Puerto Rico, Inc., Victor Company of Japan, Limited and US JVC Corp.

Sharrets, Paley, Carter & Blauvelt, P.C. (Gail T. Cumins and *Ned Marshak* of counsel) for plaintiffs Sanyo Electric Co., Ltd., Sanyo Electric Inc., and Sanyo Manufacturing Corporation.

WATSON, *Judge:* Defendant-intervenor, Zenith Radio Corporation (Zenith) has moved for rehearing of the Court's decision in *Matsushita Electric Industrial Co.* v. *United States,* 6 CIT—Slip Op. 83-69 (July 14, 1983). The International Trade Commission (ITC) has filed a memorandum in support of the motion for rehearing and plaintiffs have filed in opposition. The motion has given the Court cause to clarify the decision but it has not changed the Court's opinion that the correct decision is to reverse the ITC determination rather than to remand for further proceedings.

Remand has been urged for three reasons. The first is purely procedural—that the ITC did not make a separate, preliminary determination that circumstances had changed sufficiently to justify a review of its injury determination. In the Court's view, the changed circumstances determination is implicit in the very conduct of the administrative review. The text of the ITC determination also expressly recognizes the changes that had taken place in the circumstances of the U.S. television industry since the previous investigation. A remand for the purpose of now taking a foreordained procedural step would exalt form over substance and be an unfair and unjustifiable revival of the administrative process.

The second reason urged for remand is that the Court either found legal errors or developed unforeseen legal principles which, for their correction or application, normally require the agency to undertake further proceedings. The Court is of the opinion that all of its legal analyses were facets of its fundamental finding that the determination was not supported by substantial evidence.

Thus, the legal significance derived by the Court from the ITC's finding of changed circumstances related solely to the insubstantial nature of the "evidence" utilized by the ITC. The Court found that the ITC could not make use of alleged failures by the Japanese interests to satisfy burdens of proof or alleged failures by them to overcome presumptions that they would resume exports at injurious levels. These basic conclusions as to what was defective about the "evidence" relied on by the ITC did not constitute new inter-

pretations of key legal terms or principles which might have shown that the agency was misdirecting its investigative efforts and ought to be given an opportunity to investigate again. The ITC knew perfectly well what it was looking for. Its determination that it had found a threat of injury was wrong simply because it was based on insubstantial presumptions, asserted failures to satisfy non-existent burdens, and speculations about future events.

The Court sees no comparison between this case and the propriety of remand in cases such as *F.P.C.* v. *Idaho Power Co.*, 344 U.S. 17 (1952) or *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940). The ITC determination was reversed because, after a complete administrative hearing, directed at the proper statutory objectives, the determination was not supported by substantial evidence.

This leaves us with the third category of reasons urged for remand, in which it is argued that the Court guessed at the ITC's reasons, or interpreted them, or took it upon itself to resolve contradictions between findings, rather than return the matter to the ITC for clarification of ambiguities or resolution of contradictions.

Although the ITC determination was not a model of directness and precision, the Court believes that, on the whole, it was intelligible. The Court further believes that it has accurately stated and analyzed the rationale of the determination. On one point, however, the Court now recognizes that its opinion was confusing; and it takes this opportunity to clarify the analysis.

The Court accepted the premise of the ITC that the significant segment of the U.S. production facilities now owned by the Japanese (the subsidiaries) was part of the U.S. industry. When the time came for the Court to express its views on the one scenario of injury which had some conceivable support (the second scenario), its reasoning became unfocused. In the analysis, it said that the surge of 13" sets might be substantial evidence for a finding that the Japanese might supplement U.S. production of the subsidiaries in the short-term. The Court then made the fanciful point that this would be an aid, not an injury, given the fact that those whose production was being supplemented were part of the U.S. industry. The Court then indicated that the scenario of supplemental importations might be inconsistent with the earlier findings (when the subsidiaries were included in the U.S. industry) that there was no special coordination between them and the Japanese producers.

The Court has reviewed that portion of the opinion and found that it does not clearly express the Court's view of the second scenario and leaves the impression that this scenario was found to be entirely supported by evidence and had the same validity as the decision to include the subsidiaries in the U.S. industry.

In reality, the Court reasons as follows: The determination to include the subsidiaries was properly made and soundly based. It was specifically based on a finding that there was no coordination between the subsidiaries and the Japanese producers. The ITC reject-

ed a possible alternative view of the evidence presented by Vice Commissioner Calhoun. Consequently, there is no ground for viewing that basic finding as anything less than fully supported by substantial evidence.

On the other hand, the second scenario is not supported by substantial evidence to the extent of finding coordination between the Japanese producers and the subsidiaries. The surge of 13" sets is only tentatively stated as support for a finding of coordination. Lacking a definiteness equivalent to the finding that there *was no coordination,* the initial finding of no coordination is given controlling importance by the Court. The necessity to engage in reasoning as to what would happen if subsidiaries were found to be coordinating less than fair value importations is thus eliminated, and the Court retracts that part of the opinion.

We are left with a finding, fully supported by the evidence, that there is *no* coordination between the subsidiaries and the Japanese producers, coupled with a prediction of injury which depends on coordination, but is not based on a *finding* of coordination.

In this situation, a remand is not called for to resolve a contradiction between the ITC findings because a contradiction does not exist. The first finding is clearly valid; the second prediction is not supported on the crucial fact of coordination.

It is now too late for Zenith to attack the ITC decision to include the subsidiaries in the U.S. industry. The proper time for that argument was in the original motion for review.

In sum, the Court is of the opinion that in this case remand would only serve to allow the ITC to correct a minor procedural irregularity or to allow the agency to search for evidence which it could have sought in the first proceeding, or to repair an injury finding which was defective and in conflict with another validly made determination. All of these would be improper and unfair uses of the remand technique.

For these reasons, the Motion for rehearing it DENIED.

(Slip Op. 83-103)

ATLANTIC SUGAR, LTD., and REDPATH SUGARS, LTD., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, and AMSTAR CORPORATION, PARTY-IN-INTEREST

Court No. 80-5-00754

Before WATSON, *Judge.*

Memorandum Opinion and Order

(Dated October 14, 1983)

Rogers & Wells (Robert V. McIntyre and *George C. Smith* on the briefs) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General *(David M. Cohen,* director, Commercial Litigation Branch, *Francis J. Sailer,* Commercial Litigation Branch, on the briefs) for the defendant.

Sullivan & Cromwell and *Baker & McKenzie* for the Party-in-Interest.

WATSON, *Judge:* This is the fourth decision in the course of a judicial review of a final determination made by the International Trade Commission (ITC) in an antidumping investigation. The ITC determined that the importation of refined sugar from Canada, sold at less than fair value from October 1, 1978 through March 21, 1979, was causing material injury to a regional industry in the United States.[1]

In the first judicial decision, the Court remanded the matter for reconsideration upon discovery of miscalculations in the data underlying some of the ITC's findings.[2] Subsequently, the ITC found that even with the corrected data, the aggregate profits for the domestic producers continued to decline.[3]

In the second judicial decision, the Court rejected the aggregation method utilized by the ITC in this particular investigation as an inappropriate approach to finding that injury was experienced by "the producers of all or almost all, of the production within that market" as required in a regional industry investigation. Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)). At issue was whether the Canadian importations caused material injury to the Revere Sugar Corporation (Revere), which was the second largest producer, providing roughly one quarter of the production in the region. In the absence of a finding of injury to Revere, the Court noted that it would be difficult to sustain a finding of injury to the region.[4] Accordingly, the Court ordered that the ITC "determine whether the Revere Sugar Corporation suffered injury within the meaning of this statute and if not, whether there is any reason to conclude that those who *were* injured are the producers of all or almost all the production in the region." [5] This resulted in another ITC determination of injury.[6]

That determination was rejected by the Court in the third judicial decision because the ITC based its conclusions as to Revere's injury upon "an evaluation of data that was not confined to Revere's operation within the eleven-state Northeast regional limitation of this investigation." [7] The ITC included the data on Revere's plant in Chicago, which is outside the region under investigation. The matter was again "remanded to the ITC to determine whether Revere Sugar Corporation's Northeast regional operations, exclusive of the Chicago plant, suffered material injury." [8] The Court

[1] *Sugars and Sirups From Canada,* Inv. No. 731-TA-3, (March 6, 1980).

[2] *Atlantic Sugar, Ltd.* v. *United States,* 2 CIT 18, 519 F. Supp. 916 (1981).

[3] *Sugars and Sirups From Canada,* Inv. No. 731-TA-3 (October 5, 1981).

[4] The ITC has already determined that two other regional producers, Monitor Sugar Co. and Michigan Sugar Co., were not materially injured by the Canadian imports.

[5] *Atlantic Sugar, Ltd.* v. *United States,* 2 CIT 295 (1981).

[6] *Sugars and Sirups From Canada,* Inv. No. 731-TA-3 (April 26, 1982).

[7] The region consists of the states of Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Vermont.

[8] *Atlantic Sugar, Ltd.* v. *United States,* 4 CIT 248, 553 F. Supp. 1055 (1982).

further ordered that "This determination must take into account the information on Revere's sales and profits for 1976 and 1977, unless the Commission chooses to disregard this data and gives its reasons for doing so." [9]

Once again, the Court must review the ITC's determination of injury to Revere Sugar Corporation.

The Court accepts the ITC's reasons for not utilizing the 1976 and 1977 data on Revere's predecessor-in-interest. The Court was concerned with the possibility that the absence of that data might have detracted from a complete and accurate analysis of the effect of Canadian imports. However, the significant reservations expressed by the accountants who audited the reports, including misrepresentations by management, and an inability to rely upon the corporation's internal accounting controls are a substantial basis for the agency decision to disregard the data.

In support of this latest re-determination[10] the ITC notes that it has no way to separate the Chicago plant data from the aggregate data on Revere's operations. During the investigation, the commodity-industry analyst primarily responsible for the investigation was told by the president of Revere that discrete Chicago plant data could not be readily provided. Revere's president also told the analyst that the Chicago plant was relatively minor compared to Revere's two other plants (Revere's regional operations), and that in any event, the condition of the Chicago plant was not significantly different from the Northeast region plants. Defendant argues that the aggregate data for Revere's operations is therefore the "best information available" and that, as such, it constitutes lawful and substantial support for the ITC's finding of injury to Revere under Section 776 of the Tariff Act of 1930 (19 U.S.C. § 1677e(b)).

The defendant's position on the Chicago plant lacks the requisite substantial legal support. The most fundamental flaw with the ITC's determination lies in the nature of the data itself.

As noted previously by the Court:

> The regional industry provision, and therefore an investigation of material injury to a regional industry, is limited to producers "within such market who sell all or almost all of their production of the like product in that market." Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)).
>
> Since it has already been determined that a regional industry in a separate and isolated market, with specified boundaries does exist, the ITC may not now ignore those boundaries when evaluating evidence for the purpose of determining whether the same regional industry has been materially injured. The proscription against the use of data from elsewhere is necessary to insure that the regional industry found to exist at an earlier juncture is actually the subject of the later material injury investigation.

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[9] *Id.*

[10] *Sugars and Sirups From Canada*, Inv. No. 731-TA-3 (March 22, 1983).

Atlantic Sugar, Ltd. v. *United States,* 4 CIT 248, 553 F. Supp. 1055 (1982).

In addition to the statutory requirement that the investigation be confined to the region, the necessity of limiting investigative data to Revere's regional operations also flows from the logical requirements for evidence in this type of investigation.

The Chicago plant is one of only three plants operated by Revere.[11] Evidence in the record indicates that production at this plant is of sufficient quantity so that the inclusion of its statistics in the aggregate data could significantly disguise or distort the data for Revere's regional operations.

Given the inability to separate the Chicago plant data or determine its effects upon the aggregate data, it is not possible to say that the aggregate data used by the ITC is fairly and accurately representative of Revere's regional operations.

It is essential that the evidentiary predicate from which the ITC draws reasonable inferences be representative of the subject of inquiry. Inasmuch as the Revere data utilized by the ITC lacks this essential quality, all inferences made from the data regarding the Revere regional operations, no matter how logical in the abstract, are no more than speculation or conjecture.

Defendant's protestation that the aggregate Revere data was justifiably employed as "the best information available" is without merit. First, the law only allows the agency to resort to less ideal evidence when "* * * a party or any other person *refuses or is unable to produce* information * * * or otherwise *significantly impedes* an investigation * * *." Section 776 of the Tariff Act (19 U.S.C. § 1677e(b)). (emphasis added) The uncontroverted evidence shows only that the data on Revere's regional operations was "not readily available." This degree of difficulty cannot be said to rise to the level of a refusal or inability to provide the requested information or a significant impediment, particularly given the critical importance of regional data to a regional investigation. If the Court were to strain and allow such a construction, it would be rendering meaningless the ITC's obligation to conduct an accurate investigation within the region. *See Budd Co.* v. *United States,* 1 CIT 67, 507 F. Supp. 997 (1980). Second, even if Revere was unable or unwilling to provide the regional data, the information used by the ITC still does not constitute proper evidence. It is not simply weaker evidence substituted for stronger evidence. It is irrelevant and immaterial data substituting for evidence. Its usefulness has been completely destroyed by the inclusion of the Chicago plant.

The Court also has other reservations concerning the use of the aggregate Revere data. The assertion by Revere's president that the Chicago data was not readily available lacks plausibility, because it is reasonable to expect that a large corporation such as

[11] Revere's plants are located in Brooklyn, New York; Charlestown, Massachusetts; and Chicago, Illinois.

Revere would maintain records of the separate operations of its plants. In addition, since a regional industry with a separate and distinct character was determined to exist,[12] it is reasonable to expect that data reflecting this separation would be readily ascertainable from those who are producers in the region. The claim that the size of the Chicago plant was relatively minor is refuted by evidence in the record. Finally, the assertion that the condition of the Chicago operation was similar to the condition of the regional operations depends on precisely the kind of separate data that Revere's president said was not readily available.

Given these reasons, the data relied upon by the ITC in making its determination that Canadian refined sugar imports materially injured Revere Sugar Corporation's Northeast regional operations is wholly unsuitable as substantial legal support for the ITC's findings. As a result of the lack of support for a finding of injury to Revere, the Court cannot sustain the ITC's determination of injury to "the producers of all or almost all of the production within that market." Section 771(4)(C) of the Tariff Act (19 U.S.C. § 1677(4)(C)). The removal of Revere from the group of producers injured dramatically reduces the injury to the region to a level clearly below the amount required to sustain a regional injury determination. With the percentage of regional production adversely affected by Canadian imports now reduced to less than three quarters of regional production, it can no longer be said that injury is being done to the producers of all or almost all of the production in that market. The pervasiveness of injury which the Court believes is necessary to a finding of injury within a region is lacking.

Accordingly, it is hereby

ORDERED that the final injury determination and the resultant antidumping duty order are vacated.

(Slip Op. 83-104)

BETHLEHEM STEEL CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 82-10-01369

Before WATSON, *Judge.*

Memorandum Opinion and Order on Motion for Access to Confidential Business Information

The Court grants access to business confidential information to plaintiff's retained counsel but denies access to plaintiff's corporate counsel.

[Motion for access denied in part and granted in part]

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[12] *Atlantic Sugar, Ltd.* v. *United States*, 2 CIT 295 (1981).

(Decided October 18, 1983)

Law Offices of Eugene L. Stewart (*Eugene L. Stewart, Terence P. Stewart* and *Paul W. Jameson*) and Law Department, Bethlehem Steel Corp. (*Custis H. Barnette,* General Counsel; *Meredith Hemphill, Jr.,* Assistant General Counsel; *Laird D. Patterson,* General Attorney; and *Roger W. Robinson,* General Attorney) for plaintiff Bethlehem Steel Corp.

J. Paul McGrath, Assistant Attorney General, David M. Cohen, Director, Commercial Litigation Branch (*Francis J. Sailer,* Attorney, Commercial Litigation Branch) for the United States.

Busby, Rehm and Leonard, P.C. (*Larry E. Klayman* of counsel) for defendant-intervenor Highveld.

Office of the General Counsel, U.S. International Trade Commission (*Michael H. Stein,* General Counsel; *Michael P. Mabile,* Assistant General Counsel; *Warren H. Maruyama,* Attorney) for *amicus curiae* U.S. International Trade Commission.

WATSON, *Judge:* Plaintiff Bethlehem Steel Corporation has moved for access to confidential business information in the administrative record which is under judicial review in this action.[1] Access is sought for plaintiff's retained counsel as well as for corporate counsel. Defendant-Intervenor Highveld Steel and Vanadium Corporation Limited (Highveld) has filed in opposition to access to business confidential documents which relate to Highveld. The federal defendant has filed in opposition to access for Bethlehem's corporate counsel but has no objection to access by retained counsel. The Court has examined the material *in camera* and concludes that, on terms which insure its security, it ought to be accessible in its entirety to Bethlehem's retained counsel. The material consists of business confidential information regarding the business of two South African steel producers, all of which relates to the decisions being challenged in this action. The material is necessary for the proper prosecution of the action by plaintiff.

The additional increment of benefit which plaintiff might receive from the participation of its corporate counsel is not sufficient to overcome the Court's perception of the dangers of inadvertent disclosure by corporate counsel. The reasoning of the Court in *U.S. Steel Corp.* v. *United States,* 6 CIT — Slip Op. 83-76 (July 22, 1983) applies here *a fortiori.* Where plaintiff is represented by expert and distinguished retained counsel, there is no justification for increasing the calamitous possibility of inadvertent disclosure by disclosing such potent competitive secrets to corporate counsel.

The Court notes that its evaluation of the risk of inadvertent disclosure is based entirely on the fact that corporate counsel are generally working more completely within the corporate environment and sustained, conscious compartmentalization of this potent and memorable information will be markedly more difficult for them than for retained counsel. The probity and integrity of corporate counsel is not questioned by the Court.

[1] In deciding this motion, the Court has reviewed and incorporated the relevant material from *Bethlehem Steel Corp., et al.* v. *United States,* Consol. Court No. 82-3-00288, specifically the briefs of the parties and *amicus curiae,* Corporate Counsel, and the transcript of oral argument held therein.

For these reasons, plaintiff's motion for access is DENIED with respect to corporate counsel and Granted for the documents listed on the attached Appendix A with respect to Eugene L. Stewart, Terence P. Stewart, Paul W. Jameson, and Kathleen T. Weaver, of the Law Offices of Eugene L. Stewart, subject to the following terms and conditions:

1. The above-named attorneys will treat the information contained in the requested documents (hereafter "confidential information") as confidential to the extent such information is not otherwise available in the public portion of the administrative record.

2. Within five days from the date of entry of this order, defendants will make available to the above-named attorneys, at the offices of the International Trade Administration of the Department of Commerce, for copying or examination, a copy of each of the documents listed in Exhibit A in its entirety, marked "Confidential," subject to the following terms and conditions:

a. All information not otherwise available in the public portion of the administrative record shall be considered as confidential;

b. The above-named attorneys (hereafter "attorneys") shall not disclose the information to anyone (including any officer, shareholder, director, or employee of the plaintiff in this matter) other than their *immediate* office personnel actively assisting in this litigation or in administrative proceedings resulting from an order of this Court, in this litigation, remanding this matter to the administrative agency;

c. The attorneys shall cause all office personnel authorized to see the confidential information to sign a statement of acknowledgment that the information is confidential and that such information will not be disclosed to anyone other than other authorized personnel at the Law Offices of Eugene L. Stewart.

d. Should counsel for Bethlehem consider the services of an expert necessary to the preparation of their case in this litigation, and the expert's services require the use of confidential information, the attorneys shall, prior to providing confidential information to an expert, notify counsel for defendants of their desire to retain an expert and shall provide counsel for defendants with: (1) the *curriculum vitae* of the proposed expert; (2) a description of the measures for safeguarding the confidential information to be made available to the proposed expert; (3) assurances that the proposed expert will provide the parties and the Court with a statement that he/she consents to be bound to the terms of this protective order; and (4) a certification that the proposed expert is independent of the steel industry. No later than ten days from the date of receipt of the above-described information, defendants shall either consent to the use of the expert proposed by counsel for Bethlehem or indicate their objections in writing. If the parties are unable to agree upon an acceptable expert within ten days, counsel for Bethlehem may file an appropriate motion with the Court.

e. The attorneys shall not make more than five (5) copies of any document that is deemed "Confidential" pursuant to this stipulation. A record of each copy made, and for whom it is made, shall be maintained.

f. Whenever any document subject to the protective order is not being used, it shall be stored in a locked valut, safe, or other suitable container, in a designated location at the Law Offices of Eugene L. Stewart.

g. The attorneys and their immediate office personnel (as described in 2(b)) shall neither disclose nor use any of the confidential information for purposes other than this litigation or in administrative proceedings resulting from an order of this Court, in this litigation, remanding this matter to the administrative agency.

h. Any document, including briefs and memoranda, which is filed with the Court in this civil action and which contains any of the confidential information shall be conspicuously marked as containing information that is not to be disclosed to the public, and arrangements shall be made with the Clerk of this Court to retain such documents under seal, permitting access only to the Court, Court personnel authorized by the Court to have access, and counsel for the parties who are signatories to this stipulation. The party filing any document referred to in this paragraph shall also file at the same time another copy of such document from which all of the confidential information shall have been deleted.

i. Any briefs or memoranda containing confidential information shall be served in a wrapper conspicuously marked on the front "Confidential—to be opened only by (the names of the attorneys handling the case)" and shall be accompanied by a separate copy from which the confidential information shall have been deleted.

j. If it should become necessary to introduce in evidence any documents containing the confidential information, counsel for the respective parties shall propose whatever mechanism may be available and appropriate to limit publication of the documents to an extent no wider than is necessary for purposes of this litigation.

k. Upon conclusion of this litigation, the attorneys shall return all documents containing confidential information and any and all copies made of such documents, including any documents or copies held by persons authorized under this order to have access thereto, except for copies which contain work notes of the attorneys or other authorized persons, which copies shall be destroyed. The return of such documents shall be accompanied by a certificate executed by a member of the Law Offices of Eugene L. Stewart attesting that the provisions of this paragraph have been complied with in all respects.

m. The attorneys shall promptly report any breach of the provisions of this stipulation to the Court; and it is further

ORDERED that the confidential status of all those documents in the administrative record (which record has been filed in this civil

action (and in Court No. 82-10-01361)) which have been designated as "business confidential" (including those listed in Exhibit A) be maintained, except as provided above, until further order of the Court.

EXHIBIT A.—APPENDIX A

Page	Date	Title-description
1664-1683	4/20/82	Questionnaire response and attachments
2069-2070	Undated	Highveld reconciliation between 1981 taxable income and financially reported income
2071	Undated	ISCOR reconciliation
2126-2127	Undated	Equity infusions into ISCOR from 1968
2766-2812	5/10/82	Supplementary questionnaire response from Highveld
2817-2821	5/14/82	Letter from Pienaar to Carmen with ISCOR supplementary questionnaire response
3647	7/1/82	ISCOR Loans
3755-3764	7/19/82	Verification report and exhibits
3765	Undated	Discount rate calculation
3766-3768	Undated	Quarterly Bulletin (December 1981)—South African Reserve Bank
3769	Undated	Equity calculations for ISCOR
		ISCOR Exhibits:
3872-3881	Undated	Printout of value of volume
3885-3886	Undated	ISCOR 1981 Tax Assessment
3887-3888	Undated	Statement of certain financial figures & facts for 1978-1981
3889-3890	Undated	Loan schedule A-B—(foreign loans guaranteed by the S.A. government)
3891-3939	Undated	Handlsbank's Investment Banking Activities
3940-3947	Undated	ISCOR loan prospectus 1981
3948-3969	Undated	ISCOR loan prospectus 1977
4008-4014	Undated	Summary of ISCOR loans
4015-4019	Undated	Backup document for pages 3887-3888
4020	Undated	Sample of effective cost of guaranteed loans
		Highveld Exhibits:
4030-4031	Undated	Section and plate exports to U.S.A.
4035	Undated	Revised Reconciliation between 1981 taxable and reported income
4036	Undated	Revised answer to Question IV A Subsection 4 of the Questionnaire

(Slip Op. 83-105)

ARMCO, INC. and CF&I STEEL CORPORATION, PLAINTIFF, *v.* UNITED STATES, DEFENDANT, and AH JU STEEL CO., LTD., ET AL., INTERVENORS

Court No. 80-9-01435

Before FORD, *Judge.*

Memorandum and Order

(Dated October 19, 1983)

Freeman, Wasserman & Schneider (*Herbert Peter Larsen* on the motion) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division (*Francis J. Sailer* on the motion) for the defendant.

FORD, *Judge:* Plaintiff has moved pursuant to Rule 59 of the Rules of this Court for a rehearing of a decision of this Court 6 CIT —, Slip Op. 83-88 (August 22, 1983), which dismissed the action. In the original action both plaintiff and defendant had moved for summary judgment, plaintiff seeking to have the liquidations enjoined and the matter remanded to the International Trade Administration to determine whether any false, fictitious or fraudulent statements or representations were made during the course of its investigation, as well as setting aside all liquidations which had occurred.

The grounds relied on by plaintiff "are that this Court appears to have overlooked or misapprehended the impact of two recent cases cited in plaintiffs' reply to oppositions by defendant and intervenors to motion for preliminary injunction and remand: *Zenith Radio Corp.* v. *United States,* 710 F. 2d 806 (Fed. Cir., June 27, 1983)l and *Timken Co.* v. *United States,* 6 CIT —, Slip Op. 83-82 (17:34 Cust. Bull. 45, August 1, 1983)." It is the position of plaintiff that since the Court cited *S. J. Stile Associates Ltd.* v. *Dennis Snyder,* 68 CCPA 27, C.A.D. 1261, 646 F. 2d 522 (1981) and enumerated the elements necessary for a preliminary injunction, it must have relied heavily upon said decision. The *Stile* case was cited and the elements for a preliminary injunction enumerated merely as *dicta,* since the action was dismissed on the ground that any fraudulent statements did not affect the decision of the ITA. Therefore, the decision of dismissal did not require consideration of the issuance of a preliminary injunction.

In Slip Op. 83-88 the Court, in considering the merits of the matter of remand, reviewed the factual situation and made the following observation:

> Mitsui (U.S.A.) admitted to filing false customs documents, the Special Summary Steel Invoices, in violation of 18 U.S.C. 371. The latter invoices were utilized by customs to determine

> whether sales were being made below the "trigger price". However, the information utilized to determine less than fair value margins did not involve the price from Mitsui (U.S.A) to its customers in the United States. The purchase price was calculated on the basis of the price *to* and unrelated trading company or *to* an unrelated purchaser in the United States. 45 Fed. Reg. 3942. The determination by the ITA involved the price *from* the nail manufacturing companies *to* the trading companies. This was the price that was compared to foreign market value which would not be affected by any subsequent fraud on the part of a trading company in dealings with its customers in the United States.

The Court further stated:

> Since it was the price of the Korean nail manufacturing companies to the trading companies that established less than fair value margin, that margin could not have been affected by the subsequent price from the Japanese trading companies to its customers.

Under the foregoing circumstances it is apparent that the purpose of the preliminary injunction was to enjoin the liquidation of the entries until the ITA could make its finding and return the matter to the Court for determination. The *Zenith* and *Timken* cases unquestionably stand for the proposition that liquidation in and of itself is sufficient grounds for holding that irreparable harm has been established. However, this issue is moot for the reasons set forth in the dismissal of the matter by Slip Op. 83–88.

Plaintiff's motion is therefore denied.

Acccordingly, it is

ORDERED that plaintiff's motion, under Rule 59 for a rehearing, be and the same hereby is denied.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 20, 1983.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/305	Boe, J. October 13, 1983	E. Gluck Corp.	81-2-00124	Item 715.05 (716.14/716.18) Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 .6¢ per lb. + 7.5%, 7.4%, 7% or 6.7% (merchandise marked "B" brass c.v.) Item 657.20 9.5%, 9%, 8.6% or 8.1% (merchandise marked "B" steel c.v.) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches consisting of modules; modules and cases etc. (merchandise marked "A"); cases and bands (merchandise marked "B"); entireties

P83/306	Boe, J. October 13, 1983	E. Gluck Corp., a/k/a Armitron Corp.	81-8-01081	Item 715.05 (716.14/716.18) Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 .6¢ per lb. + 7.5%, 7.4%, 7% or 6.7% (merchandise marked "B" brass c.v.) Item 657.20 9.5%, 9%, 8.6% or 8.1% (merchandise marked "B" steel c.v.) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches consisting of modules; modules and cases etc. (merchandise marked "A"); cases and bands (merchandise marked "B"); entireties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/307	Re, C.J. October 17, 1983	A & A International Inc.	81-6-00797, etc.	Not stated	Item A685.70 Free of duty (Cat. No. 60-3003 and those Cat. Nos. 63-3001 and 63-3002 manufactured in Hong Kong) Item 685.70 Appropriate rate of duty (Cat. Nos. 63-3001 and 63-3002 manufactured in China)	A & A International, Inc. v. U.S. Slip Op. 83-42	Boston Metal detectors
P83/308	Re, C.J. October 17, 1983	A & A International Inc.	81-7-00888, etc.	Not stated	Item A685.70 Free of duty (Cat. No. 60-3003 and those Cat. Nos. 63-3001 and 63-3002 manufactured in Hong Kong Item 685.70 Appropriate rate of duty (Cat. Nos. 63-3001 and 63-3002 manufactured in China)	A & A International, Inc. v. U.S. Slip Op. 83-42	Los Angeles Metal detectors
P83/309	Landis, J. October 17, 1983	BASF Wyandotte Corp.	83-5-00663	Item 523.91 6.5%	Item 423.96 3.1%	Customs Service ruling, 4/19/83 (No. 070956)	New Orleans 03-10 catalyst

P83/310	Landis, J. October 17, 1983	Lloyd's Electronics Int'l	80-10-01580	Item 676.20 5% Item 720.16 75¢ each +16%	Item 676.20 5% Item 688.40 5.5%	Agreed statement of facts	Los Angeles Solid-state digital calculator/ timekeeping devices with LCD displays
P83/311	Newman, J. October 17, 1983	Sumitomo Corporation of America	80-9-01536	Item 609.86 8.5% + additional duties	Item 609.82 0.1¢ per lb. + 2% + additional duties	Philipp Overseas, Inc. v. U.S. (C.D. 4859) aff'd C.A.D. 1263	New Orleans "Stainless steel angles, ASTM A276, T-304, hot rolled, annealed and pickled"
P83/312	Boe, J. October 17, 1983	Casio, Inc.	81-8-01106	Item 716.10 through 716.29 Various rates (merchandise marked "A", "B" (module), "C" (module) and "D" (module) Items 720.20, 720.24, 720.28 Various rates (merchandise marked "B" (cases) and "D" (cases) Item 676.20 Not stated (merchandise marked "C" (calculator) and "D" (calculator)	Item 688.36 5.5%, 5.3% or 5.1% (merchandise marked "A") Item 688.36 5.5%, 5.3% or 5.1% (merchandise marked "B") Item 676.20 5%, 4.8% or 4.7% (merchandise marked "C") Item 688.36 5.5%, 5.3% or 5.1% (merchandise marked "D")	U.S. v. Texas Instruments Inc. No. 81-23 3/25/82	New York; Los Angeles; Chicago Electronic watch modules, electronic watches, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/313	Boe, J. October 17, 1983	Leisurecraft Products, Ltd.	81-8-01121	Item 715.05 (716.14/716.18) Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 (Merchandise marked "B" plated with gold) Item 657.35 (Merchandise marked "B" brass c.v.) Item 657.25 (Merchandise marked "B" steel c.v.) Various rates or free under GSP upon basis that GSP documents should be waived in accordance with 19 CFR 10.173	Agreed statement of facts	New York Electronic LCD watches, etc.

P83/314	Boe, J. October 17, 1983	Magnavox Consumer Electronics Co.	81-5-00570	Merchandise classified as combination articles with the constructively separated clock movements classified under items 715.15, 716.18, 720.02, 720.14 or 720.16 at various rates (merchandise marked "A") Merchandise classified as combination articles with the constructively separated clock movements classified under items 715.68 or 720.18 at various rates (merchandise marked "B")	Item 685.24 10.4% or 9.9% (merchandise marked "A") Item 685.40 5.5% (merchandise marked "B")	Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23, 3/25/82	Los Angeles AM/FM radios with clock (merchandise marked "A"); video cassette recorders (merchandise marked "B"); entireties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/315	Boe, J. October 17, 1983	Magnavox Consumer Electronic Co.	81-7-00946, etc.	Merchandise classified as combination articles with the constructively separated clock movements classified under items 715.15, 716.18, 720.02, 720.14 or 720.16 at various rates (merchandise marked "A") Merchandise classified as combination articles with the constructively separated clock movements classified under items 715.68 or 720.18 at various rates (merchandise marked "B")	Item 685.24 10.4% or 9.9% (merchandise marked "A") Item 685.40 5.5% (merchandise marked "B")	Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23, 3/25/82	Los Angeles AM/FM radios with clock (merchandise marked "A"); video cassette recorders (merchandise marked "B"); entireties
P83/316	Boe, J. October 17, 1983	The Ratek Corporation	82-8-01106	Item 716.18 .59¢ each	Item 688.36 5.1%	Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23, 3/25/82	Philadelphia L.E.D. modules

P83/317	Boe, J. October 18, 1983	Jet Sonic Corporation	82-2-00215	Item 716.10 or 716.18 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.30, 740.34 or 740.35 Various rates (chains) Item 774.55 or 791.54 Various rates (straps)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9%	Texas Instruments Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23, 3/25/82	New York Solid state electronic digital watches; entireties
P83/318	Boe, J. October 18, 1983	RCA Corporation	81-1-00073S	Item 685.20 5% Item 720.18 $1.125 each + 16% (digital clock/timer)	Item 685.20 5%	Texas Instruments Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23, 3/25/82	Chicago Portable video cassette recorder tuner/timer modules which contain digital clock/timers

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/645	Watson, J. October 13, 1983	Compass Instrument & Optical Co., Inc.	R59/18364, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R83/646	Watson, J. October 13, 1983	Lipmans Imports Inc.	241912A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Pipe fittings
R83/647	Watson, J. October 14, 1983	Hayim & Co., et al.	256807A, etc.	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Cotton hooked rugs, pipe fittings
R83/648	Watson, J. October 14, 1983	Hayim & Co., Inc.	R60/846, etc.	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Wool rugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/649	Watson, J. October 14, 1983	Hayim & Co.	R60/17092	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Wool rugs
R83/650	Watson, J. October 14, 1983	Hayim & Co.	R60/18817, etc.	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Wool rugs
R83/651	Watson, J. October 14, 1983	Hayim & Co., Inc.	R61/3604, etc	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Rugs/mats
R83/652	Watson, J. October 14, 1983	Hayim & Co., et al.	R64/17769	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	Seattle Wool hooked rugs and tubular mats
R83/653	Watson, J. October 14, 1983	Imported Rug Associates Ltd.	R66/22499, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Wool hooked rugs and tubular mats
R83/654	Watson, J. October 14, 1983	J. C. Penney	R61/23837	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Norfolk Sweaters
R83/655	Watson, J. October 14, 1983	Kanematsu New York Inc.	R61/5164, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Wool and silk fabric
R83/656	Watson, J. October 14, 1983	Mitsubishi International Corp.	R60/19138, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Textiles
R83/657	Re, C.J. October 17, 1983	Mitsui & Co. (USA), Inc.	73-12-03335	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v U.S. (C.D. 4739)	New York; San Francisco Not stated

R83/658	Re, C.J. October 17, 1983	Spiegel, Inc.	73-8-02435, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currrency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago Not stated
R83/659	Re, C.J. October 17, 1983	Zayre Corporation	73-11-03257	Export value	Appraised values, less amounts added for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles; Boston; New York; Miami; Chicago Not stated
R83/660	Re, C.J. October 17, 1983	Zayre Corporation	75-8-02045	Export value	Appraised values, less amounts added for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles; New York Not stated
R83/661	Landis, J. October 17, 1983	N. L. Industries, Inc. et al.	83-7-01055	United States value	F.o.b. invoice values	Agreed statement of facts	Los Angeles Titanium dioxide pigments
R83/662	Watson, J. October 17, 1983	Shalom & Co.	272800A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Hooked rugs
R83/663	Watson, J. October 18, 1983	Cohn Hall Marx	R58/24826, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Silk fabric
R83/664	Watson, J. October 18, 1983	Compass Instrument & Optical Co., Inc.	R59/11171, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R83/665	Watson, J. October 18, 1983	Compass Instrument & Optical Co., Inc.	R59/11902	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios, accessories and parts; entireties
R83/666	Watson, J. October 18, 1983	Compass Instruments & Optical Co., Inc.	R60/14103, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/667	Watson, J. October 18, 1983	Empire Findings Co., Inc.	R61/14213, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Thermometers
R83/668	Watson, J. October 18, 1983	Gunze N.Y. Inc.	R59/15883, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk piece goods and silk & rayon mixed goods
R83/669	Watson, J. October 18, 1983	Nipkow & Kobelt Inc.	299721A, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Silk fabric
R83/670	Watson, J. October 18, 1983	Nipkow & Kobelt Inc.	R58/5378, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Rayon mixed silk fabric and silk fabric
R83/671	Watson, J. October 18, 1983	Nipkow & Kobelt Inc.	R59/5282, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk and rayon mixed silk fabric
R83/672	Watson, J. October 18, 1983	Nipkow & Kobelt Inc.	R59/9202, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabric
R83/673	Watson, J. October 18, 1983	Oriental Exporters, Inc., et al.	R63/728, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Transistor radios with accessories and parts; entireties
R83/674	Watson, J. October 18, 1983	Siber Hegner Co. Inc.	286927A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk piece goods

R83/675	Watson, J. October 19, 1983	Berkshire Handkerchief Co.	R60/16192	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Transistor radios with accessories and parts; entireties
R83/676	Watson, J. October 19, 1983	Cohn Hall Marx	R59/8707, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Los Angeles Silk fabric
R83/677	Watson, J. October 19, 1983	Cohn Hall Marx	R59/10936, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	San Francisco Silk piece goods
R83/678	Watson, J. October 19, 1983	Lipmans Imports, Inc.	241911A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Plugs, bushings, flanges, etc.

Appeal to the U.S. Court of Appeals for the Federal Circuit

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